COUR INTERNATIONALE DE JUSTICE

MÉMOIRES, PLAIDOIRIES ET DOCUMENTS

APPLICABILITÉ DE LA SECTION 22 DE L'ARTICLE VI DE LA CONVENTION SUR LES PRIVILÈGES ET IMMUNITÉS DES NATIONS UNIES

INTERNATIONAL COURT OF JUSTICE

PLEADINGS, ORAL ARGUMENTS, DOCUMENTS

APPLICABILITY OF ARTICLE VI, SECTION 22, OF THE CONVENTION ON THE PRIVILEGES AND IMMUNITIES OF THE UNITED NATIONS

Référence abrégée :

C.I.J. Mémoires, Applicabilité de la section 22 de l'article VI de la convention sur les privilèges et immunités des Nations Unies

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PRINTED IN THE NETHERLANDS

L'affaire de l'*Applicabilité de la section 22 de l'article VI de la convention sur les privilèges et immunités des Nations Unies*, inscrite au rôle général de la Cour sous le numéro 81, a fait l'objet d'un avis consultatif rendu le 15 décembre 1989 (*Applicabilité de la section 22 de l'article VI de la convention sur les privilèges et immunités des Nations Unies, C.I.J. Recueil 1989*, p. 177).

Le présent volume reproduit la requête pour avis consultatif, les documents, les exposés écrits et oraux et la correspondance relatifs à cette affaire.

La Haye, 1992.

The case concerning *Applicability of Article VI, Section 22, of the Convention on the Privileges and Immunities of the United Nations* was entered as No. 81 in the Court's General List and was the subject of an Advisory Opinion delivered on 15 December 1989 (*Applicability of Article VI, Section 22, of the Convention on the Privileges and Immunities of the United Nations, I.C.J. Reports 1989*, p. 177).

The present volume reproduces the Request for advisory opinion, the documents, the written and oral statements and the correspondence in the case.

The Hague, 1992.

TABLE DES MATIÈRES — CONTENTS

Page

Requête pour avis consultatif — Request for Advisory Opinion

THE SECRETARY-GENERAL OF THE UNITED NATIONS TO THE PRESIDENT OF THE INTERNATIONAL COURT OF JUSTICE 3

Annexes

I. A. 1989/75. Status of special rapporteurs 4
I. B. 1989/75. Statut des rapporteurs spéciaux 5
II. Vote on amendment to text on special rapporteur's status . . . 6
III. Vote on status of special rapporteurs 6
II. Vote sur l'amendement du texte relatif au statut de rapporteur spécial 7
III. Vote sur le statut des rapporteurs spéciaux 7

Dossier transmis par le Secrétaire général des Nations Unies (article 65, paragraphe 2, du Statut) — Dossier transmitted by the Secretary-General of the United Nations (Art. 65, para. 2, of the Statute)

INTRODUCTORY NOTE 11

The request 11
Framework of the Dossier 11
Introduction to Part I: Materials relating to the proceedings leading to the request by the Council for an advisory opinion 11
Introduction to Part II: Materials relevant to the Convention on the Privileges and Immunities of the United Nations 16
Introduction to Part III: Materials relevant to the status of experts on missions 18
Introduction to Part IV: General materials 21
Introduction to Part V: Materials relating to developments following the request by the Economic and Social Council for an advisory opinion 22

CONTENTS OF THE DOSSIER (under this heading are listed the titles of the documents reproduced, while the titles of those not reproduced are mentioned in the text) 24

Part I. Materials relating to the proceedings leading to the request by the Economic and Social Council for an advisory opinion . . 24

Commission on Human Rights: fortieth session (Geneva, 6 February-16 March 1984) 24

Report on the fortieth session: Chapter XXIV. Election of members of the Sub-Commission on Prevention of Discrimination and Protection of Minorities 24

Commission on Human Rights: forty-first session (Geneva, 4 February-15 March 1985) 26

Report on the forty-first session: resolution 1985/13. The role of youth in the field of human rights, particularly in

Page

achieving the objectives of the International Youth Year: Participation, Development, Peace 26

Sub-Commission on Prevention of Discrimination and Protection of Minorities: thirty-eighth session (Geneva, 5-30 August 1985) 28

Report on the thirty-eighth session: resolution 1985/12. Human rights and youth 28

Relevant correspondence and communications between 18 March 1986 and 15 May 1987. 29

Letter dated 18 March from Mr. Mazilu to the Centre for Human Rights. 29

Letter dated 6 May 1986 from the Chief, Research, Studies and Prevention of Discrimination Section, Centre for Human Rights, to Mr. Mazilu 29

Letter dated 5 June 1986 from the Chief, Research, Studies and Prevention of Discrimination Section, Centre for Human Rights, to Mr. Mazilu. 30

Letter dated 8 October 1986 from the Chief, Research, Studies and Prevention of Discrimination Section, Centre for Human Rights, to Mr. Mazilu. 30

A (sample) note verbale dated 9 January 1987 to Governments 31

Letter dated 15 May 1987 from the Research and Studies Unit, Prevention of Discrimination and Protection of Minorities Section, Centre for Human Rights, to Mr. Mazilu transmitting information received in response to the notes verbales of 9 January 1987. 32

Economic and Social Council: organizational session for 1987 (New York), 3-6 February 1987) 32

Decision 1987/102, Term of office of the current members of the Sub-Commission on Prevention of Discrimination and Protection of Minorities, adopted on 6 February 1987. . . 32

Commission on Human Rights: forty-third session (Geneva, 2 February-13 March 1987). 33

Resolution 1987/44. The role of youth in the field of human rights, particularly in achieving the objectives of the International Youth Year: Participation, Development, Peace, adopted on 10 March 1987 33

Correspondence on 14 May 1987 35

Letter dated 14 May 1987 from the Officer-in-Charge, Research, Studies and Prevention of Discrimination Section, Centre for Human Rights, to Mr. Mazilu 35

Sub-Commission on Prevention of Discrimination and Protection of Minorities: thirty-ninth session (Geneva, 10 August-4 September 1987) 36

Summary record of the 5th meeting 36

Correspondence and communications between 10 August 1987 and 11 February 1988 38

Telex dated 18 August 1987 under the name of Mr. Mazilu, addressed to the Chairman of the Sub-Commission 38

Page

Letter dated 3 November 1987 from the Under-Secretary-General for Human Rights to Mr. Mazilu. 39
Cable dated 17 December 1987 from the Under-Secretary-General for Human Rights to Mr. Mazilu. 39
Letter postmarked 25 December 1987 from Mr. Mazilu to the Under-Secretary-General for Human Rights. 39
Letter postmarked 29 December 1987 from Mr. Mazilu to the Under-Secretary-General for Human Rights. 40
Cable dated 19 January 1988 from the Under-Secretary-General for Human Rights to the Acting Director, United Nations Information Centre, Bucharest. 41
Letter (undated) from Mr. Mazilu to the Under-Secretary-General for Human Rights transmitted by a letter dated 20 January 1988 from the Acting Director, United Nations Information Centre, Bucharest. 41
Cable dated 21 January 1988 from the President of the United Nations Association of Romania to the Centre for Human Rights 43
Letter dated 11 February 1988 from the Under-Secretary-General for Human Rights to the Acting Director, United Nations Information Centre, Bucharest. 43

Commission on Human Rights: forty-fourth session (Geneva, 1 February-11 March 1988). 44

Report on the forty-fourth session: Chapter XXIV. Election of members of the Sub-Commission on Prevention of Discrimination and Protection of Minorities, paragraphs 595-599 44

Correspondence and communications between 5 April and 19 August 1988 46

Letter dated 5 April 1988 from Mr. Mazilu to the Under-Secretary-General for Human Rights 46
Letter from Mr. Ion Diaconu dated 29 March 1988 to the Chairman of the Sub-Commission on Prevention of Discrimination and Protection of Minorities transmitted by a note verbale dated 8 April 1988 from the Permanent Mission of Romania to the United Nations in Geneva . . . 47
Letter dated 19 April 1988 from Mr. Mazilu to the Chairman and members of the Sub-Commission on Prevention of Discrimination and Protection of Minorities. 48
Letter dated 19 April 1988 from Mr. Mazilu to the Under-Secretary-General for Human Rights 49
Letter dated 6 May 1988 from the Under-Secretary-General for Human Rights to the Permanent Representative of Romania to the United Nations Office at Geneva 50
Letter dated 6 May 1988 from the Under-Secretary-General for Human Rights to Mr. Mazilu 51
Letter dated 8 May 1988 from Mr. Mazilu to the Under-Secretary-General for Human Rights 52
Letter dated 8 May 1988 from Mr. Mazilu to the Chairman of the Sub-Commission on Prevention of Discrimination and Protection of Minorities 52

Page

Letter dated 17 May 1988 from Mr. Mazilu to the Under-Secretary-General for Human Rights 52
Letter dated 19 May 1988 from the Centre for Human Rights to Mr. Mazilu transmitted through the Acting Director, United Nations Information Centre, Bucharest. 53
Letter dated 15 June 1988 from the Under-Secretary-General for Human Rights to the Permanent Representative of Romania to the United Nations Office at Geneva. 54
Letter dated 27 June 1988 from the Permanent Representative of Romania to the United Nations Office at Geneva to the Under-Secretary-General for Human Rights. 55
Telex received 24 July 1988 from Mr. Diaconu to the Chairman of the Sub-Commission on Prevention of Discrimination and Protection of Minorities 56
Letter dated 1 July 1988 from the Under-Secretary-General for Human Rights to the Permanent Representative of Romania to the United Nations Office at Geneva 56
Cable dated 9 August 1988 from the Under-Secretary-General for Human Rights to Mr. Mazilu 57
Telex dated 10 August 1988 from the Officer-in-Charge, United Nations Information Centre, Bucharest, to the Under-Secretary-General for Human Rights. 57
Telex dated 11 August 1988 from the Under-Secretary-General for Human Rights to the Officer-in-Charge, United Nations Information Centre, Bucharest. 58
Cable dated 11 August 1988 from the Under-Secretary-General for Human Rights to Mr. Mazilu. 58
Letter dated 11 August 1988 from Mr. Mazilu to the Chairman of the Sub-Commission on Prevention of Discrimination and Protection of Minorities 59
Letter dated 19 August 1988 from Mr. Mazilu to the Under-Secretary-General for Human Rights. 59

Sub-Commission on Prevention of Discrimination and Protection of Minorities: fortieth session (Geneva, 8 August-2 September 1988) 59

Report on the fortieth session: decision 1988/102. Organization of work: report by Dumitru Mazilu, adopted on 15 August 1988 59
Report on the fortieth session: resolution 1988/37. Prevention of discrimination and protection of children: human rights and youth, adopted on 1 September 1988. 60
Report on the fortieth session, paragraphs 11-25 and 416-420. . 61
Summary record of the 2nd meeting 63
Summary record of the 5th meeting. 65
Summary record of the 7th meeting. 66
Summary record of the 9th meeting. 70
Summary record of the 14th meeting 76
Summary record of the first part of the 32nd meeting. . . . 78
Summary record of the second part of the 36th meeting. . . . 80
Memorandum dated 23 August 1988 from the Office of Legal Affairs to the Under-Secretary-General for Human Rights. . 82

Page

Memorandum dated 30 August 1988 from the Legal Counsel to the Under-Secretary-General for Human Rights 84

Correspondence and communications from 26 October 1988 to 6 January 1989 86

Note verbale dated 26 October 1988 from the Secretary-General of the United Nations to the Permanent Representative of Romania to the United Nations in New York 86

Letter dated 19 December 1988 from the Under-Secretary-General for Human Rights to the Permanent Representative of Romania to the United Nations Office at Geneva . . . 87

Letter dated 19 December 1988 from the Under-Secretary-General for Human Rights to Mr. Mazilu 87

Aide-mémoire delivered on 6 January 1989 to the Legal Counsel by the Permanent Representative of Romania. . . 88

Commission on Human Rights: forty-fifth session (Geneva, 30 January-10 March 1989). 91

Note by the Secretary-General pursuant to paragraph 2 of resolution 1988/37 of the Sub-Commission on Prevention of Discrimination and Protection of Minorities. 91

Summary record of the second part of the 51st meeting . . . 95

Report on the forty-fifth session: resolution 1989/37. Status of special rapporteurs, adopted on 6 March 1989. 96

Correspondence and communications during May 1989 98

Letter dated 5 May 1989 from the Under-Secretary-General for Human Rights to the Permanent Representative of Romania to the United Nations Office at Geneva. 98

Letter dated 5 May 1989 from the Under-Secretary-General for Human Rights to Mr. Mazilu 98

Letter dated 5 May 1989 from Mr. Mazilu to the Secretary-General and to the Chairman of the Sub-Commission . . . 99

Letter dated May 1989 from Mr. Mazilu to the Under-Secretary-General for Human Rights 99

Letter dated May 1989 from Mr. Mazilu to the Under-Secretary-General for Human Rights 100

Letter dated May 1989 from Mr. Mazilu to the Secretary-General and the Chairman of the Sub-Commission 100

Economic and Social Council: first regular session of 1989 (New York, 2-26 May 1989) 103

16th meeting: unofficial sound transcript. 103

Resolution 1989/75. Status of special rapporteurs, adopted on 24 May 1989 105

Part II. Materials relating to the Convention on the Privileges and Immunities of the United Nations 105

Other materials 106

General Assembly resolution 22 A (I), adopted on 13 February 1946 106

Accession, succession and reservations to the Convention on Privileges and Immunities of the United Nations, 1946 . . 112

Page

Aide-mémoire dated 26 August 1960 from the Department of Legal Affairs to the Permanent Mission of a Member State 123

Part III. Materials relevant to the status of experts on mission . . 125

Memorandum dated 17 April 1981 from the Assistant Administrator, Bureau for Finance and Administration, to the field offices of UNDP and UNDP headquarters staff 127

Sample of Special Service Agreement (Expert on Mission) (TCD 25/A (3-85), para. 4). 131

Relations between States and international organizations (second part of topic) (International Law Commission, thirty-seventh session, 6 May-26 July) (extracts). 133

Part IV. General materials relevant to the case 137

Commission on Human Rights: terms of reference. 137

Economic and Social Council resolution 5 (I), adopted on 16 February 1946. 137

Sub-Commission on Prevention of Discrimination and Protection of Minorities: terms of reference. 139

Commission on Human Rights, report of the Commission on its fifth session, Chapter IV, paragraph 13 139

Other materials 142

General Assembly resolution 89 (I) 142

Part V. Materials relating to developments following the request by the Economic and Social Council for an advisory opinion . . 143

Sub-Commission on Prevention of Discrimination and Protection of Minorities: forty-first session (Geneva, 7 August-1 September 1989) 143

Report on human rights and youth prepared by Mr. Dumitru Mazilu, Special Rapporteur 143

Report on human rights and youth prepared by Mr. Dumitru Mazilu, Special Rapporteur, Addendum 145

Note verbale dated 15 August 1989 from the Permanent Mission of the Socialist Republic of Romania to the United Nations Office at Geneva addressed to the Centre for Human Rights 145

Draft report on the forty-first session: Chapter XVI. Promotion, protection and restoration of human rights at national, regional and international levels 149

Summary record of the 1st meeting. 152

Summary record of the 4th meeting. 153

Summary record of the 6th meeting. 154

Summary record of the 8th meeting. 154

Summary record of the 10th meeting 155

Summary record of the 26th meeting 155

Compte rendu analytique de la première partie de la 35e séance 157

Summary record of the 39th meeting 161

Statement of Mr. I. Diaconu, the expert from Romania, made on 30 August 1989 164

Statement of the Under-Secretary-General for Human Rights, made on 30 August 1989. 167

Draft report on the forty-first session 168

Page

Exposés écrits — Written Statements

WRITTEN STATEMENT SUBMITTED ON BEHALF OF THE SECRETARY-GENERAL OF THE UNITED NATIONS 173

Introduction 173

I. Summary of the facts giving rise to the request for an advisory opinion 174

A. Appointment of Mr. Mazilu as Special Rapporteur on "Human Rights and Youth" 174
B. The thirty-ninth session of the Sub-Commission. 174
C. Communications between Mr. Mazilu and the Centre from the thirty-ninth to the fortieth session of the Sub-Commission 175
D. Expiration of Mr. Mazilu's term as a member of the Sub-Commission 175
E. Requests addressed to the Romanian Government to enable the completion of the human rights and youth report by Mr. Mazilu 176
F. The fortieth session of the Sub-Commission 176
G. The legal opinions of the Office of Legal Affairs 177
H. Sub-Commission resolution 1988/37 on the prevention of discrimination and protection of children: human rights and youth 178
I. Exchange of correspondence between the Secretary-General and the Permanent Representative of Romania 178
J. The Secretary-General's report to the Fifth Committee of the General Assembly at its forty-third session 179
K. The request for an advisory opinion 179
L. Further communications from Mr. Mazilu 180

II. The propriety of the Economic and Social Council addressing its question to the International Court of Justice and of the Court responding thereto 180

A. The authority of the Economic and Social Council . . . 180
B. The effect of the Romanian reservation to the General Convention 181
C. The discretion of the Court to give an advisory opinion . . 183

III. The Convention on the Privileges and Immunities of the United Nations (the "General Convention") 184

A. History of and participation in the Convention 184
B. The legal status of the Convention vis-à-vis the Organization 184
C. Interpretation of the Convention 185

IV. The concept of "experts on missions" under the General Convention 185

A. The text and the formulation of the Convention 185
B. Relevant practice under the Convention 186
C. The scope of the privileges and immunities accorded to experts on missions 188
D. The status of experts on missions vis-à-vis their own Governments or in their own countries 188

Page

V. The status of rapporteurs of the Sub-Commission under the General Convention 189
A. The status of members of the Sub-Commission 189
B. Rapporteurs and special rapporteurs of the Sub-Commission 190
VI. The situation of Mr. Mazilu 191
A. Mr. Mazilu's appointment as Special Rapporteur 191
B. The continuation of Mr. Mazilu's appointment as Special Rapporteur 191
C. Mr. Mazilu's status as an expert on mission 192
Conclusion 193
Annex I. Examples of categories of persons considered to be "experts on missions for the United Nations" within the meaning of Article VI, Section 22, of the General Convention 195
Annex II, A. List of Rapporteurs and Special Rapporteurs of the Sub-Commission on Prevention of Discrimination and Protection of Minorities who completed their assignments after the expiration of their terms of office as members of the Sub-Commission 198
B. List of persons appointed by the Sub-Commission as Rapporteurs or Special Rapporteurs who were not members of the Sub-Commission 200

MÉMORANDUM DU GOUVERNEMENT DE LA RÉPUBLIQUE SOCIALISTE DE ROUMANIE 201
Mémorandum relatif à la requête pour avis consultatif transmise à la Cour internationale de Justice en vertu de la résolution 1989/75 du Conseil économique et social du 24 mai 1989 201
Annexe 206

LETTRE DU JURISCONSULTE ET DIRECTEUR GÉNÉRAL DES AFFAIRES JURIDIQUES DU MINISTÈRE FÉDÉRAL DES AFFAIRES ÉTRANGÈRES DE LA RÉPUBLIQUE FÉDÉRALE D'ALLEMAGNE AU GREFFIER 207

WRITTEN STATEMENT OF THE GOVERNMENT OF THE UNITED STATES OF AMERICA 208
Introduction 208
A. The Court's jurisdiction 209
B. The Court's discretion 210
Factual background 210
A. Appointment of Dumitru Mazilu as Special Rapporteur of the Sub-Commission 210
B. Actions by the Government of Romania to prevent Dumitru Mazilu from fulfilling his duties as Special Rapporteur . . . 211
Applicability of Article VI, Section 22, of the Convention on the Privileges and Immunities of the United Nations 213
A. As a Special Rapporteur of the Sub-Commission Dumitru Mazilu is an expert on a mission for the United Nations within the meaning of Article VI 213

Page

B. The provisions of Article VI apply as between Romania and Mr. Mazilu, a Romanian resident national 215

Conclusion 217

WRITTEN STATEMENT OF THE GOVERNMENT OF CANADA 219

ADDITIONAL COMMENTS OF THE GOVERNMENT OF THE UNITED STATES OF AMERICA 220

Introduction 220

I. Jurisdiction of the Court 221

A. The Court has jurisdiction to render this advisory opinion under Article 96 of the Charter and United Nations General Assembly resolution 89 (I) 221

B. Romania's reservation to Section 30 does not affect the jurisdiction of the Court to render this advisory opinion . . 222

C. The Court has jurisdiction to render this advisory opinion whether or not a dispute exists between the United Nations and Romania 223

II. Applicability of Article VI, Section 22, of the General Convention to Mr. Mazilu 224

A. The status of Mr. Mazilu as a special rapporteur of the Sub-Commission has not terminated 224

B. Special rapporteurs of the Sub-Commission are experts on missions for the United Nations 225

C. As a special rapporteur, Mr. Mazilu is entitled to the privileges and immunities specified in Article VI, Section 22 226

Conclusion 227

Exposés oraux — Oral Statements

OUVERTURE DE LA PROCÉDURE ORALE 232

ORAL STATEMENT BY MR. FLEISCHHAUER 234

I. Updating the factual background 234

II. The competence of the Court 236

III. Experts on missions under the General Convention 238

IV. Privileges and immunities of experts on missions 239

V. Status of experts is not related to nationality 241

VI. Status of Mr. Mazilu 242

Conclusion 243

ORAL STATEMENT BY MR. SOFAER 244

Introduction 244

Jurisdiction 244

Merits 247

Conclusion 247

QUESTIONS DE M. GUILLAUME ET DU PRÉSIDENT 248

Question de M. Guillaume 248

Questions du Président 248

Page

REPLY BY MR. FLEISCHHAUER TO QUESTIONS PUT BY JUDGE GUILLAUME AND BY THE PRESIDENT 249

Question by Judge Guillaume 249
First question by President Ruda 250
Second question by President Ruda 250
Third question by President Ruda 251

CLÔTURE DE LA PROCÉDURE ORALE 253

LECTURE DE L'AVIS CONSULTATIF 254

Correspondance — Correspondence 257

REQUÊTE POUR AVIS CONSULTATIF

REQUEST FOR ADVISORY OPINION

THE SECRETARY-GENERAL OF THE UNITED NATIONS TO THE PRESIDENT OF THE INTERNATIONAL COURT OF JUSTICE

1 June 1989.

I have the honour to inform you that pursuant to Article 96, paragraph 2, of the Charter of the United Nations, the Economic and Social Council at its sixteenth meeting held on 24 May 1989 adopted resolution 1989/75 entitled "Status of special rapporteurs" requesting an advisory opinion on a priority basis from the International Court of Justice on "the legal question of the applicability of Article VI, Section 22, of the Convention on the Privileges and Immunities of the United Nations" of 13 February 1946 "in the case of Mr. Dumitru Mazilu as Special Rapporteur of the Sub-Commission" on Prevention of Discrimination and Protection of Minorities. A certified copy of the resolution in English and French is enclosed (Annex I, A and B). The words "on a priority basis" in operative paragraph 2 were proposed by the United States and were adopted by a recorded vote of 17 in favour and 9 against, with 22 abstentions (Annex II). The resolution as a whole, as amended, was adopted by a recorded vote of 24 in favour and 8 against, with 19 abstentions (Annex III).

I also have the honour to inform you that materials for submission to the Court are being prepared pursuant to Article 65 of the Statute and will be submitted to the Court as soon as possible.

(Signed) Javier PÉREZ DE CUÉLLAR.

Annex I

A

1989/75. STATUS OF SPECIAL RAPPORTEURS

The Economic and Social Council,

Having considered resolution 1988/37 of 1 September 1988 of the Sub-Commission on Prevention of Discrimination and Protection of Minorities and Commission on Human Rights resolution 1989/37 of 6 March 1989,

1. *Concludes* that a difference has arisen between the United Nations and the Government of Romania as to the applicability of the Convention on the Privileges and Immunities of the United Nations[1] to Mr. Dumitru Mazilu as Special Rapporteur of the Sub-Commission on Prevention of Discrimination and Protection of Minorities;

2. *Requests,* on a priority basis, pursuant to Article 96, paragraph 2, of the Charter of the United Nations and in accordance with General Assembly resolution 89 (I) of 11 December 1946, an advisory opinion from the International Court of Justice on the legal question of the applicability of Article VI, Section 22, of the Convention on the Privileges and Immunities of the United Nations in the case of Mr. Dumitru Mazilu as Special Rapporteur of the Sub-Commission.

CERTIFIED TRUE COPY.

New York, N.Y. 1 June 1989.

(Signed) Carl-August FLEISCHHAUER,
The Legal Counsel.

---

[1] General Assembly resolution 22 A (I).

Annexe I

B

1989/75. STATUT DES RAPPORTEURS SPÉCIAUX

Le Conseil économique et social,

Ayant examiné la résolution 1988/37 de la Sous-Commission de la lutte contre les mesures discriminatoires et de la protection des minorités, en date du 1er septembre 1988, et la résolution 1989/37 de la Commission des droits de l'homme, en date du 6 mars 1989,

1. *Conclut* qu'une divergence de vues s'est élevée entre l'Organisation des Nations Unies et le Gouvernement roumain quant à l'applicabilité de la convention sur les privilèges et immunités des Nations Unies[1] au cas de M. Dumitru Mazilu, en sa qualité de rapporteur spécial de la Sous-Commission de la lutte contre les mesures discriminatoires et de la protection des minorités;

2. *Demande* à titre prioritaire à la Cour internationale de Justice, en application du paragraphe 2 de l'article 96 de la Charte des Nations Unies et conformément à la résolution 89 (I) de l'Assemblée générale, en date du 11 décembre 1946, un avis consultatif sur la question juridique de l'applicabilité de la section 22 de l'article VI de la convention sur les privilèges et immunités des Nations Unies au cas de M. Dumitru Mazilu en sa qualité de rapporteur spécial de la Sous-Commission.

COPIE CERTIFIÉE CONFORME.

New York, le 1er juin 1989.

(Signé) Carl-August FLEISCHHAUER,
le conseiller juridique.

---

[1] Résolution 22 A (I) de l'Assemblée générale.

Annex II

Vote on Amendment to Text on Special Rapporteur's Status

The Economic and Social Council decided to include the words "on a priority basis" in operative paragraph 2 of a draft requesting the International Court's advisory opinion on the status of rapporteurs (draft resolution II, document E/1989/88), by a recorded vote of 17 in favour to 9 against, with 22 abstentions, as follows:

In favour: Canada, Denmark, France, Germany, Federal Republic of, Greece, Ireland, Italy, Japan, Kenya, Netherlands, New Zealand, Norway, Portugal, United Kingdom of Great Britain and Northern Ireland, United States of America, Uruguay, Venezuela.

Against: Bulgaria, Cuba, Czechoslovakia, Iran (Islamic Republic of), Libyan Arab Jamahiriya, Nicaragua, Poland, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics.

Abstaining: Belize, Bolivia, Brazil, Cameroon, China, Colombia, Ghana, Guinea, Indonesia, Iraq, Jordan, Lesotho, Liberia, Niger, Oman, Rwanda, Sri Lanka, Sudan, Tunisia, Yugoslavia, Zaire, Zambia.

Absent: Bahamas, India, Saudi Arabia, Somalia, Thailand, Trinidad and Tobago.

Annex III

Vote on Status of Special Rapporteurs

The Economic and Social Council adopted, as orally amended, a resolution on the status of special rapporteurs (draft resolution III, document E/1989/88), by a recorded vote of 24 in favour to 8 against, with 19 abstentions, as follows:

In favour: Bahamas, Belize, Bolivia, Brazil, Canada, Colombia, Denmark, France, Germany, Federal Republic of, Greece, Ireland, Italy, Japan, Kenya, Netherlands, New Zealand, Norway, Portugal, Trinidad and Tobago, United Kingdom of Great Britain and Northern Ireland, United States of America, Uruguay, Venezuela, Yugoslavia.

Against: Bulgaria, Cuba, Czechoslovakia, Iran (Islamic Republic of), Libyan Arab Jamahiriya, Poland, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics.

Abstaining: Cameroon, China, Ghana, Guinea, Indonesia, Iraq, Jordan, Lesotho, Liberia, Nicaragua, Niger, Oman, Rwanda, Sri Lanka, Sudan, Thailand, Tunisia, Zaire, Zambia.

Absent: India, Saudi Arabia, Somalia.

Annexe II

VOTE SUR L'AMENDEMENT DU TEXTE RELATIF AU STATUT DE RAPPORTEUR SPÉCIAL

Le Conseil économique et social a décidé d'inclure les mots «à titre prioritaire» dans le paragraphe 2 d'un projet qui demande l'avis consultatif de la Cour internationale sur le statut des rapporteurs (projet de résolution II publié dans le document E/1989/88), et ce par un vote enregistré, par 17 voix contre 9, avec 22 abstentions, se répartissant comme suit:

Ont voté pour: Allemagne (République fédérale d'), Canada, Danemark, Etats-Unis d'Amérique, France, Grèce, Irlande, Italie, Japon, Kenya, Norvège, Nouvelle-Zélande, Pays-Bas, Portugal, Royaume-Uni de Grande-Bretagne et d'Irlande du Nord, Uruguay, Venezuela.

Ont voté contre: Bulgarie, Cuba, Iran (République islamique d'), Jamahiriya arabe libyenne, Nicaragua, Pologne, République socialiste soviétique d'Ukraine, Tchécoslovaquie, Union des Républiques socialistes soviétiques.

Se sont abstenus: Belize, Bolivie, Brésil, Cameroun, Chine, Colombie, Ghana, Guinée, Indonésie, Iraq, Jordanie, Lesotho, Libéria, Niger, Oman, Rwanda, Soudan, Sri Lanka, Tunisie, Yougoslavie, Zaïre, Zambie.

Absents: Arabie saoudite, Bahamas, Inde, Somalie, Thaïlande, Trinité-et-Tobago.

Annexe III

VOTE SUR LE STATUT DES RAPPORTEURS SPÉCIAUX

Le Conseil économique et social a adopté, telle qu'amendée oralement, une résolution sur le statut des rapporteurs spéciaux (projet de résolution III, document E/1989/88), à la suite d'un vote enregistré, par 24 voix contre 8, avec 19 abstentions, se répartissant comme suit:

Ont voté pour: Allemagne (République fédérale d'), Bahamas, Belize, Bolivie, Brésil, Canada, Colombie, Danemark, Etats-Unis d'Amérique, France, Grèce, Irlande, Italie, Japon, Kenya, Norvège, Nouvelle-Zélande, Pays-Bas, Portugal, Royaume-Uni de Grande-Bretagne et d'Irlande du Nord, Trinité-et-Tobago, Uruguay, Venezuela, Yougoslavie.

Ont voté contre: Bulgarie, Cuba, Iran (République islamique d'), Jamahiriya arabe libyenne, Pologne, République socialiste soviétique d'Ukraine, Tchécoslovaquie, Union des Républiques socialistes soviétiques.

Se sont abstenus: Cameroun, Chine, Ghana, Guinée, Indonésie, Iraq, Jordanie, Lesotho, Libéria, Nicaragua, Niger, Oman, Rwanda, Soudan, Sri Lanka, Thaïlande, Tunisie, Zaïre, Zambie.

Absents: Arabie saoudite, Inde, Somalie.

DOSSIER TRANSMIS
PAR LE SECRÉTAIRE GÉNÉRAL
DES NATIONS UNIES

DOSSIER TRANSMITTED BY THE
SECRETARY-GENERAL
OF THE UNITED NATIONS

INTRODUCTORY NOTE

28 July 1989.

The Request

1. On 24 May 1989 the Economic and Social Council (hereinafter the "Council"), at its 16th meeting of its first regular session of 1989, adopted resolution 1989/75 entitled "Status of Special Rapporteurs" (Dossier No. 99). By this resolution, the Council decided to request an advisory opinion from the International Court of Justice.

Framework of the Dossier

2. The Dossier, prepared pursuant to the President's Order of 14 June 1989 and paragraph 2 of Article 65 of the Statute of the Court, contains the documents and other materials likely to throw light upon the question on which the advisory opinion of the Court is requested. The items in the Dossier are numbered consecutively and identified, as appropriate, by title or official United Nations symbol.

3. The Dossier is divided into four Parts[1]. Part I contains materials relating to the proceedings leading to the request by the Council for an advisory opinion. Part II contains materials relating to the Convention on the Privileges and Immunities of the United Nations. Part III contains materials relating to the status of experts on missions. Part IV contains materials relating to the terms of reference of the Commission on Human Rights and the Sub-Commission on Prevention of Discrimination and Protection of Minorities, and other relevant materials.

Introduction to Part I

Materials Relating to the Proceedings Leading to the Request by the Council for an Advisory Opinion

4. On 13 March 1984 the Commission on Human Rights (hereinafter the "Commission") elected by secret ballot, at its 53rd meeting of the fortieth session, Mr. Dumitru Mazilu (who was nominated by Romania) as one of the 26 members of the Sub-Commission on Prevention of Discrimination and Protection of Minorities (hereinafter the "Sub-Commission") for a three-year term expiring on 31 December 1986 (Dossier Nos. 1, 1A and 2), which was later extended by the Council to the end of 1987 (see para. 10, below).

5. On 11 March 1985 the Commission, at the 51st meeting of its forty-first session, adopted (without a vote) resolution 1985/13 requesting the Sub-Commission to pay due attention to the role of youth in the field of human rights (Nos. 3, 4 and 5).

6. On 29 August 1985 the Sub-Commission, at the 37th meeting of its thirty-eighth session, adopted (without a vote) resolution 1985/12 by which it requested

[1] A further Part (Part V) was submitted at a later date, see p. 22, *infra*. *[Note by the Registry.]*

Mr. Mazilu, in order to facilitate the Sub-Commission's discussion of the topic, to prepare a report on human rights and youth analysing the efforts and measures for securing the implementation and enjoyment by youth of human rights, particularly the right to life, education and work, to be presented to it at its thirty-ninth session in 1986 (No. 6). The Secretary-General was requested to provide all necessary assistance to Mr. Mazilu for the completion of his work *(ibid.)*. It was envisaged that Mr. Mazilu would come to Geneva for consultations for a period of up to 8 working days and present his report at the Sub-Commission's thirty-ninth session in 1986 (No. 7).

7. By a letter dated 18 March 1986, addressed to the Centre for Human Rights (the "Centre"), Mr. Mazilu indicated his availability for consultations in Geneva for purposes of the report (No. 8). In response, the Centre suggested a visit between 26 and 30 May 1986 (No. 9).

8. Pursuant to decision 40/472 on the "Current financial crisis of the United Nations", adopted by the General Assembly at its fortieth session, the thirty-ninth session of the Sub-Commission was postponed to 1987. The Centre accordingly informed Mr. Mazilu of the deferral and requested information for re-scheduling his visit (No. 10). On 8 October 1986 Mr. Mazilu was informed that it was not possible to finance in 1986 his trip to Geneva for consultations on the report but that sufficient funds would be available in 1987 to do so (No. 11). Certain suggestions were also made for the preparation of the study *(ibid.)*.

9. In January 1987 requests were sent out on behalf of Mr. Mazilu to Governments, specialized agencies and non-governmental organizations seeking information and material to be used for the preparation of the study; document No. 12 is a sample of such Notes Verbales. Information received in response to those Notes Verbales was subsequently transmitted from the Centre to Mr. Mazilu between February and June 1987 (No. 13).

10. By its decision 1987/102, the Council at the 3rd plenary meeting of its organizational session held on 6 February 1987, decided to extend the term of office of the members of the Sub-Commission for one year (i.e., 31 December 1987) "to ensure their participation in the thirty-ninth session of the Sub-Commission to be held in 1987" (No. 14).

11. On 10 March 1987 the Commission adopted, by a roll-call vote of 34 to none, with 8 abstentions, at the 54th meeting of its forty-third session, resolution 1987/44 taking note with appreciation of resolution 1985/12 of the Sub-Commission appointing Mr. Mazilu to prepare a report on the topic of human rights and youth (Nos. 15 and 16).

12. On 14 May 1987 the Centre informed Mr. Mazilu that the thirty-ninth session of the Sub-Commission had been scheduled and that he was invited to attend the meetings of the Working Groups on Slavery (as a member) and on Indigenous Populations (as an alternate) before the Sub-Commission's meeting (No. 17). Mr. Mazilu was requested to provide information in order to make arrangements for his travel to Geneva.

13. On 12 August 1987 questions were raised in the Sub-Commission, at the 5th meeting of its thirty-ninth session, regarding the whereabouts of Mr. Mazilu (No. 18). The Secretariat informed the Sub-Commission that a letter had been received from the Permanent Mission of Romania stating that Mr. Mazilu had suffered a heart attack in June and would not be able to travel to Geneva (*ibid.*, paras. 14 and 27). On 18 August a telex under the name of Mr. Mazilu addressed to the Chairman of the Sub-Commission was received stating that he was not in a position to attend the session (No. 19).

14. On 4 September 1987 the Sub-Commission deferred consideration of the sub-item dealing with human rights and youth (i.e., the Mazilu report) to its

next (fortieth) session, to be held in 1988 (decision 1987/12); the item was included in its draft provisional agenda for that session (No. 18).

15. Between 3 November and 17 December 1987, communications were sent from the Centre to Mr. Mazilu offering assistance for the preparation of his report and enquiring as to his plans to visit Geneva for consultations (Nos. 20 and 21).

16. In a letter postmarked 25 December 1987, addressed to the Under-Secretary-General for Human Rights (USGHR) and received on 7 January 1988, Mr. Mazilu stated that since May 1986 he had not received regular news from the Centre and requested that all documents of the Sub-Commission be sent to him (No. 22). This was then followed by Mr. Mazilu's letter postmarked 29 December 1987 to the Centre stating his willingness to come to Geneva on 14 February 1988 for consultations (No. 23). He also mentioned that he had not received any invitation to attend the Sub-Commission's last session and annexed to his letter a copy of his curriculum vitae.

17. On 31 December 1987 Mr. Mazilu's membership and those of the other 25 members of the Sub-Commission expired.

18. The Centre on 19 January 1988 cabled the United Nations Information Centre (UNIC) in Bucharest requesting it to transmit a message to Mr. Mazilu inviting him to Geneva for consultations and for the preparation of his report beginning 15 February 1988 (No. 24). On 20 January 1988 the Acting Director of UNIC Bucharest transmitted to the Centre a letter (undated) and enclosures from Mr. Mazilu, addressed to the USGHR (No. 25). Mr. Mazilu again expressed his willingness to travel to Geneva to work on his report and stated that he had tried but failed to obtain permission from his Government to come to the Sub-Commission's session in Geneva the previous year. The Centre accordingly sent a telex to UNIC Bucharest making travel arrangements for Mr. Mazilu's visit to Geneva (No. 26).

19. On 21 January 1988 the President of the Romanian Association for the United Nations cabled the Centre stating that his predecessor, Mr. Mazilu, had retired for health reasons (No. 27).

20. On 11 February 1988 the USGHR again wrote to UNIC Bucharest requesting the latter to transmit certain messages to Mr. Mazilu (No. 28).

21. At its forty-fourth session in 1988, the Commission elected 26 members of the Sub-Commission (No. 29), including Mr. I. Diaconu (nominated by Romania). The Commission also adopted resolution 1988/43 on the work of the Sub-Commission (No. 30), which *inter alia* urged all the special rapporteurs to submit their reports on time and called upon all members to attend its sessions and working groups.

22. In a letter dated 5 April 1988, Mr. Mazilu informed the Centre that he was unable to obtain permission to travel and requested further assistance for his visit to Geneva (No. 31).

23. On 8 April 1988 the Romanian Mission transmitted a letter from Mr. Ion Diaconu, dated 29 March 1988, addressed to the Chairman of the Sub-Commission, in which Mr. Diaconu offered to prepare a report on human rights and youth for the Sub-Commission (No. 32).

24. On 19 April 1988 Mr. Mazilu wrote to the Chairman and members of the Sub-Commission regarding his report and the difficulties he had encountered in its preparation (No. 33). On the same day Mr. Mazilu informed the USGHR that he had completed the first version of the main ideas of his report on youth and human rights and that he hoped to find a way to send it (No. 34).

25. By a letter dated 6 May 1988, the USGHR transmitted to the Permanent Representative of Romania the request of the Chairman of the Sub-

Commission, inviting Mr. Mazilu to come to Geneva for consultations and the preparation of his report (No. 35). On the same day the Centre wrote to Mr. Mazilu informing him of the latest arrangement made for his travel to Geneva (No. 36).

26. On 8 May 1988 Mr. Mazilu informed the Centre that he had finished a new chapter (in Romanian) of his report and was trying to find a way to send it and that he was ready to come to Geneva at the end of that month or at any other time (No. 37). On the same day Mr. Mazilu also wrote to the Chairman of the Sub-Commission (No. 38). On 17 May 1988 Mr. Mazilu informed the USGHR that he was unable to find a way to send his report to Geneva and requested that this fact should be made known to all concerned (No. 39).

27. On 19 May 1988 the Centre again transmitted to Mr. Mazilu via UNIC Bucharest documents for the preparation of his report, previously sent but not received by Mr. Mazilu (No. 40).

28. In a letter dated 15 June 1988, addressed to the Permanent Representative of Romania, the USGHR proposed a procedure to be followed in this matter and requested the former's agreement (No. 41). The Permanent Representative responded on 27 June 1988 and proposed that Mr. Diaconu prepare the report for the Sub-Commission (No. 42). This was followed by a telex dated 24 July 1988 from Mr. Diaconu addressed to the Chairman of the Sub-Commission informing the latter of his availability to do so (No. 43). On 1 July 1988, the USGHR informed the Permanent Representative of Romania that Mr. Mazilu's mandate derived from a decision of the Sub-Commission and that only that body or a higher policy-making body would be competent to change the assignment (No. 44).

29. The fortieth session of the Sub-Commission began on 8 August 1988, and after a debate, decided on 9 August to invite Mr. Mazilu to come to Geneva to present his report personally to the Sub-Commission according to established practice (Nos. 45 and 61). A cable to that effect was sent on the same day to Mr. Mazilu (No. 45). This message was also cabled to UNIC Bucharest for transmission to Mr. Mazilu.

30. On 10 August 1988 the Centre was informed by a telex from the officer-in-charge of UNIC Bucharest that the cable of 9 August could not be delivered to Mr. Mazilu (No. 46). PTT Bucharest informed the Centre on the same date that the cable of 9 August was not delivered as the addressee was on vacation (No. 47).

31. On 11 August 1988 the Sub-Committee decided to request the officer-in-charge of UNIC Bucharest to provide further information on the whereabouts of Mr. Mazilu (No. 48). The Centre also cabled Mr. Mazilu directly informing him that the Sub-Commission had scheduled 30 August for his presentation of the report (No. 49). UNIC Bucharest informed the Centre on 12 August that it was unable to make the contact with Mr. Mazilu (No. 51). PTT Bucharest also informed the Centre on 15 August that the cable of 11 August could not be delivered (No. 50).

32. In a letter dated 11 August 1988 Mr. Mazilu informed the Chairman and members of the Sub-Commission that he was willing to come to Geneva at any time but he was refused permission to travel (No. 52). Again, in a letter dated 19 August, Mr. Mazilu wrote to the USGHR that he was ready to come to Geneva at any time (No. 53).

33. The question of Mr. Mazilu was discussed in a number of meetings during the fortieth session of the Sub-Commission (Nos. 54-69). At the 7th meeting, on 12 August 1988, Mr. Eide and Mr. Joinet submitted a draft resolution (No. 56, para. 13) which was revised later *(ibid.)*. On 15 August 1988, the

Sub-Commission at its 10th meeting adopted decision 1988/102 by a vote of 15 to 2, with 4 abstentions and 3 not participating (Nos. 54 and 56), in which the Sub-Commission requested the Secretary-General to establish contact with the Government of Romania in order to get in touch with Mr. Mazilu. At its 23rd meeting held on 24 August 1988, an opinion prepared by the Office of Legal Affairs on the question of the applicability of the Convention on the Privileges and Immunities of the United Nations of 13 February 1947 (the "General Convention") to the situation of Mr. Mazilu charged by the Sub-Commission in its resolution 1985/12 with the preparation of a report on Human Rights and Youth, was read out in response to questions raised by members of the Sub-Commission (Nos. 65 and 71). On 30 August 1988 the Legal Counsel provided another legal opinion on a reservation by Romania with respect to Section 30 of the General Convention (No. 72).

34. On 1 September 1988 the Sub-Commission, at its 36th meeting, adopted by a roll-call vote (16 votes to 4, with 3 abstentions) resolution 1988/37 (Nos. 55 and 56, paras. 416-420), requesting *inter alia* the Secretary-General to invoke the applicability of the General Convention in the case of Mr. Mazilu and to bring this matter to the attention of the Commission, should Romania fail to apply the General Convention to Mr. Mazilu. The Mazilu report was placed on the provisional agenda for the forty-first session of the Sub-Commission (No. 70).

35. On 26 October 1988 the Secretary-General sent a Note Verbale to the Permanent Representative of Romania calling his attention to resolution 1988/37 of the Sub-Commission and requesting the latter to accord the necessary facilities to Mr. Mazilu so as to enable him to complete his assigned task (No. 73).

36. The Secretary-General in his report to the General Assembly dated 7 November 1988 regarding respect for the privileges and immunities of officials of the United Nations system mentioned Mr. Mazilu's situation (No. 79). The case was mentioned in the debate of the Fifth Committee on 18 November 1988 (No. 79A).

37. This was followed by a letter dated 19 December 1988 from the USGHR to the Permanent Representative of Romania (No. 74). On the same day, the USGHR also wrote (by registered mail with enclosures) to Mr. Mazilu informing him of the actions taken by the Secretariat pursuant to the Sub-Commission's decision and resolution (No. 75). The Resident Representative of UNDP in Bucharest was at the same time requested to transmit a copy of the letter and enclosures, and to issue a ticket to Mr. Mazilu for travel to Geneva (No. 76). On 3 February 1989 UNDP Bucharest informed the Centre that it was unable to deliver to Mr. Mazilu the documents received (No. 77).

38. On 6 January 1989, the Permanent Representative of Romania transmitted an Aide-Mémoire concerning the case of Mr. Mazilu to the Legal Counsel (No. 78), and requested its transmittal to the Commission.

39. The Commission, at its forty-fifth session, in 1989, had before it a report of Mr. M. C. Bhandare, Chairman of the Sub-Commission at its fortieth session, prepared in accordance with paragraph 20 of Commission resolution 1988/43 (No. 80) in which special reference was made to studies and reports and the activities of special rapporteurs (*ibid.*, sec. III, paras. 16 to 22). The Commission also had before it a note by the Secretary-General prepared pursuant to paragraph 2 of resolution 1988/37 of the Sub-Commission (No. 81), summarizing the events that took place since the adoption of that resolution and attaching copies of Nos. 73 and 78 (see paras. 35 and 38, above). During the discussions a number of representatives referred to the case of Mr. Mazilu (Nos. 82-87). At its 51st meeting, on 6 March 1989, a draft resolution was intro-

duced by the representative of Germany (Federal Republic of), sponsored also by Austria, France, Ireland, Luxembourg, and the United Kingdom of Great Britain and Northern Ireland (No. 89, para. 523). It was adopted without change by a roll-call vote (No. 89, para. 524) as resolution 1989/37, entitled "Status of Special Rapporteurs" (No. 88). The observer for Romania made a statement relating to the draft resolution (No. 87).

40. In a letter dated 5 May 1989 the USGHR transmitted to the Permanent Representative of Romania resolution 1989/37 of the Commission, requesting at the same time the Permanent Representative to facilitate contact with Mr. Mazilu and to enable him to come to visit Geneva to complete his work (No. 90). On the same date, the USGHR also addressed a letter to Mr. Mazilu (by registered mail) informing him of recent developments and of the travel arrangements made for him with UNDP Bucharest (No. 91).

41. In a letter dated 5 May 1989, addressed to the Secretary-General and the Chairman of the Sub-Commission, Mr. Mazilu stated, *inter alia*, that he had completed the first version of his report and that if he was prevented from presenting it to the Sub-Commission, the report should be published as is (No. 92).

42. During May 1989 four letters were received from Mr. Mazilu. The first one was addressed to the USGHR concerning Mr. Mazilu's situation and preparation of his report (No. 93). The second one, also addressed to the USGHR, transmitted therein further chapters of his report and requested consultations (No. 94). The third one was addressed to the Secretary-General and the Chairman of the Sub-Commission (No. 95) in which Mr. Mazilu stated that his report should be published as soon as possible; he also referred to the human rights situation in his country and attached a copy of a "legal action" he had initiated in Romania against the Minister of Internal Affairs and others (which is not included in the Dossier). The fourth letter was addressed to the President of the General Assembly and Chairman of the Sub-Commission concerning his own situation in particular and human rights in Romania in general (No. 96); he also attached a copy of the above-mentioned "legal action".

43. The Council held its first regular session of 1989 in New York from 2 to 26 May 1989. On 19 May 1989 the Second (Social) Committee at its 22nd meeting adopted as recommended to it by the Commission and without change draft resolution III, entitled "Status of Special Rapporteurs" by a recorded vote of 26 to 9, with 16 abstentions (No. 97, para. 15). Throughout the proceedings of the Council, the text of draft resolution III was not separately reproduced. The Council used the text contained in the report of the Commission. On 24 May 1989 the Council at its 16th meeting had before it draft resolution III recommended for adoption by its Second (Social) Committee. The United States representative orally proposed the addition of the words "on a priority basis" in operative paragraph 2 (No. 98), and this was agreed to by a recorded vote of 17 to 9, with 22 abstentions (No. 98). Draft resolution III, as amended, was adopted by a recorded vote of 24 to 8, with 19 abstentions (ECOSOC resolution 1989/75, "Status of Special Rapporteurs", No. 99).

Introduction to Part II

Materials Relevant to the Convention on the Privileges and Immunities of the United Nations

44. In December 1945 the Preparatory Commission of the United Nations recommended, *inter alia*, in Chapter VII of its Report to the General Assembly, that the Assembly, at its first session, should make recommendations with a

view to determining the details of the application of paragraphs 1 and 2 of Article 105 of the Charter, or propose conventions to the Members of the United Nations for that purpose. It also transmitted in Appendix B to the Chapter a draft convention on privileges and immunities (No. 100, Appendix B). The privileges and immunities of the "Representatives of Members" and "Officials of the Organization" were contained respectively in Articles 5 and 6 of the draft convention. The draft did not contain an article on "experts on missions" or provisions of a similar nature, but Article 7, paragraph 3, referred to facilities to be accorded to "experts and other persons who, though not officials of the United Nations, have a certificate that they are travelling on the business of the Organization". Article 11 contained a settlement of dispute clause almost identical to that later included in Section 30 of the General Convention (excepting the last sentence).

45. The General Assembly, at the 16th plenary meeting of the first part of its session, held on 19 January 1946, referred to the Sixth (Legal) Committee for consideration and report Chapter VII of the Report of the Preparatory Commission. The Committee at its 6th meeting held on 24 January 1946 appointed a Sub-Committee on Privileges and Immunities to consider the matter (No. 101).

46. On 28 January 1946, at the 7th meeting of the Sixth Committee, the Sub-Committee recommended *inter alia* to the Sixth Committee that the General Assembly should propose to the Members of the United Nations a general convention which would determine the details of application of paragraphs 1 and 2 of Article 105 of the Charter (No. 102). The Sixth Committee unanimously adopted the recommendation of the Sub-Committee *(ibid.)*.

47. The Sub-Committee prepared a series of documents concerning the privileges and immunities of the United Nations, among them a resolution relating to the adoption of a general convention on Privileges and Immunities, to which the text of the draft Convention was annexed. These comments were submitted to the Sixth Committee on 7 February 1946 (No. 103). In his Report to the Sixth Committee, the Rapporteur stated that the discussion of the General Convention on Privileges and Immunities was particularly "exhaustive and thorough" and that the text had been approved unanimously by the Sub-Committee. During its discussion in the Sixth Committee, some delegations expressed objections with respect to Sections 18 and 30. While the entire Article VI (Experts on Missions) was new, no special reference was made to it in the Report of the Sub-Committee or in the discussion of the Sixth Committee, nor was there any explanation of the origin of that provision. Before adoption, only a minor amendment was made to Section 14 in order to clarify the text, this being the only amendment made by the Sixth Committee (No. 103). At its 11th meeting held on 7 February 1946, the Sixth Committee unanimously adopted the draft recommendation concerning the General Convention on Privileges and Immunities *(ibid.)*.

48. At its 31st meeting, held on 13 February 1946, the General Assembly considered the Report of the Sixth Committee (No. 105). While some provisions of the Convention were commented upon (including Art. VIII, Sec. 30), no delegations commented on any part of Article VI, nor was any amendment proposed thereto (No. 104). The General Assembly, without a vote, adopted resolution 22 (I) A by which it approved the annexed Convention on the Privileges and Immunities of the United Nations, as recommended by the Sixth Committee, and proposed it for accession by each Member of the United Nations (No. 106).

49. Nos. 107 and 109 contain factual information (accession, succession and reservations) concerning the General Convention and the Convention on the

Privileges and Immunities of the Specialized Agencies. It should be noted that a number of States made reservations to Section 30 of the General Convention and that two States registered their objections to these reservations (No. 107). No. 108 contains the text of the Convention on the Privileges and Immunities of the Specialized Agencies, which the General Assembly adopted on 21 November 1947 and which is largely modelled on the General Convention, except that it contains no provision on "Experts on Missions"; however, such provisions are contained in most of the Annexes to that Convention adopted in respect of each of the specialized agencies.

50. In August 1960 the United Nations Department of Legal Affairs gave an opinion on certain reservations to be made by a Member State upon accession to the General Convention. These reservations would have denied both officials and experts of that State's nationality certain privileges and immunities under the Convention. The Department explained why such reservations were not acceptable and why Article VI, Section 22, must also apply to persons of that State's nationality (No. 110). That Member State did not accede to the Convention.

51. On 22 October 1963 the United Nations Secretariat sent an Aide-Mémoire to the Permanent Representative of a Member State which had proposed to accede to the General Convention subject to a reservation denying any United Nations official of that State's nationality any privileges or immunities under the Convention (No. 111). This Aide-Mémoire relates to the interpretation of Articles IV, V and VI of the Convention. As a result, that Member State acceded to the Convention without such reservation.

52. No. 112 is a copy of a statement made by the United Nations Legal Counsel at the Sixth (Legal) Committee on 6 December 1967, which referred, *inter alia*, to the legal status of the General Convention.

Introduction to Part III

Materials Relevant to the Status of Experts on Missions

53. No. 113 contains extracts from Mr. Martin Hill's book on *Immunities and Privileges of International Officials, the Experience of the League of Nations* published in 1947, in which it was recognized that there was yet another category of persons associated with the Organization who were neither "League Officials" nor "representatives of Members".

54. The rest of this Part contains materials having a bearing on the issue of "expert on mission". Most of them are examples of categories of persons which have been regarded by the United Nations as experts on missions within the meaning of Article VI of the General Convention.

55. In a memorandum dated 30 July 1948, the Department of Legal Affairs of the United Nations[1] stated that customarily, persons on committees similar to the Advisory Committee on Administrative and Budgetary Questions (ACABQ) had been considered in the category of experts within the meaning of Article VI of the General Convention (No. 114).

56. On 9 May 1951 the Secretary-General issued a circular letter to all Governments classifying "Technical Assistance Experts" as "Officials" of the Secretariat as they were engaged on substantially similar terms and served under the same conditions as other members of the staff; he therefore distinguished

[1] Now called the Office of Legal Affairs.

them from "short-term experts" coming under Article VI of the General Convention (No. 115). In 1953, the United Nations Department of Legal Affairs further clarified the distinction between "experts on missions" and "officials" (No. 116, Sec. B). In correspondence with a Member State in 1956, the Legal Counsel again described the distinction between officials and experts on missions (No. 143, para. 340).

57. Nos. 117, 123 and 126 are internal United Nations documents issued by the competent offices regarding the issuance of United Nations (travel) certificates to such persons as experts, consultants and persons holding special service agreements with the United Nations. Reference is made in this connection to Section 26 of the General Convention; further reference to United Nations practice in this regard is contained in Nos. 143 and 144. No. 124 is a sample of United Nations Certificate issued upon request to experts on missions.

58. No. 118 is a sample of a "memorandum agreement" used by the United Nations Economic Commission for Asia and the Far East (ECAFE) for entering arrangements with Governments willing to loan the services of their employees on a non-reimbursable basis for performing tasks assigned by ECAFE. Those loaned persons are considered experts on missions.

59. Nos. 119 and 120 contain correspondence pertaining to the status of members of the Joint Inspection Unit. Thus, in a telegram dated 25 January 1973 to the United Nations Office in Geneva, the Legal Counsel stated that members of the JIU are experts on missions (No. 119). Similarly, in a letter dated 8 October 1973 addressed to a member of the Joint Inspection Unit, the Legal Counsel discussed the legal implications of placing members of the JIU under Article V or VI of the General Convention (No. 120)[1].

60. In 1969, the scope and meaning of the category of "experts on missions" in relation to the members of a treaty organ, as distinct from a subsidiary organ, was the subject of memorandum by the Legal Office, which concluded that members of the Committee on the Elimination of Racial Discrimination and members of *ad hoc* conciliation commissions established under Article 12 of the International Convention on the Elimination of All Forms of Racial Discrimination fall within the category of "experts on missions" under Article VI of the General Convention (No. 122).

61. A memorandum dated 4 January 1974 from the United Nations Office of Legal Affairs to the Division of Human Rights regarding the nature of the *ad hoc* Working Group of Experts of the Commission on Human Rights, stated *inter alia* that the experts composing the Working Group are chosen on their personal qualifications and in their personal capacity. Any change in governmental affiliation does not and should not affect their membership in the Working Group (No. 121).

62. In a letter dated 9 April 1981 to the Counsel for the General Counsel of the (US) National Labor Relations Board, the United Nations Office of Legal Affairs informed the former that the status of the Special Representative of the Secretary-General to the United Nations International School (UNIS) was that of an expert on mission for the United Nations in the sense of Article VI of the General Convention (No. 125).

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[1] It should be noted that subsequently the General Assembly, by resolution 3188 (XXVIII) of 18 December 1973, designated all JIU members, as well as the full-time Chairman of the Advisory Committee on Administrative and Budgetary Questions (ACABQ) and by resolution 3357 (XXIX) of 18 December 1974, the full-time Chairman and Vice-Chairman of the International Civil Service Commission (ICSC) as "officials" for the purpose of Article V of the General Convention.

63. In a memorandum dated 3 September 1981 to the Centre for Disarmament, the United Nations Office of Legal Affairs addressed the status of the Group of Experts to Investigate the Use of Chemical Weapons and concluded that they should be accorded the status, privileges and immunities of experts on mission for the United Nations, as set out in Article VI of the Convention (No. 127). This was repeated in a memorandum dated 15 July 1982 from the Office of Legal Affairs to the Centre for Disarmament (No. 130).

64. In a memorandum dated 19 November 1981 to the Office of General Services, the United Nations Office of Legal Affairs stated that the contracts entered into by the United Nations Relief Co-ordinator (UNDRO) with personnel whose services are made available by their Governments free of charge are experts on missions for the United Nations (No. 128).

65. No. 129 is a copy of a contract entered into between the United Nations and Mr. Olof Palme for undertaking a special mission to Iran/Iraq on behalf of the Secretary-General. Under the terms of the contract it was specified that he would not be an official or staff member of the United Nations but, for the purposes of Article VI of the General Convention, would be an expert on mission for the United Nations. It was also provided in the contract that if Mr. Palme was required by the United Nations to travel he might receive a United Nations Certificate.

66. In a memorandum dated 22 August 1983 to the Controller, the United Nations Office of Legal Affairs, in response to questions of taxation of honoraria payable to members of the Human Rights Committee, stated that the status of members of the Human Rights Committee is substantially the same as that of members of the Committee on the Elimination of Racial Discrimination to which an earlier opinion by the Office of Legal Affairs related (No. 131). This was confirmed in a letter dated 2 May 1984 from the Legal Counsel to a member of the Human Rights Committee (No. 132).

67. In a letter dated 28 February 1985 the United Nations Department of Technical Co-operation for Development informed the Minister of Finance of Cyprus of the terms for hosting an Interregional Training Programme in Government Budgetary Methods and Procedures in Nicosia, Cyprus. One of the terms was that the participants invited by the United Nations "shall enjoy the privileges and immunities accorded to experts on missions for the United Nations under Article VI of the General Convention" (No. 133). It should be noted that this provision is routinely embodied in agreements of this nature.

68. By a letter dated 13 May 1985 the United Nations entered into an agreement with the Government of Tunisia for holding an Extraordinary Session of the Special Committee of 24 in Tunisia (No. 134). One of the terms of the Agreement was that the participants invited by the United Nations "shall enjoy the privileges and immunities accorded to experts on missions for the United Nations" in Article VI of the General Convention. Again, this provision appeared in other agreements of a similar nature.

69. In a memorandum dated 1 August 1985 the United Nations Office of Legal Affairs informed the Office of General Services that the status of language co-ordinators paid directly by the Government of France is that of experts on missions for the United Nations (No. 135).

70. In a memorandum dated 20 February 1986 the United Nations Office of Legal Affairs concluded that United Nations military observers who are members of the United Nations Military Observer Group in India and Pakistan are experts on missions under Article VI of the General Convention (No. 136).

71. In an Agreement dated 27 February 1987 between the United Nations and Nigeria for the convening of a United Nations Meeting of Experts on Space

Science and Technology and Its Applications within the Framework of Educational Systems, Article V provided that participants attending the meeting "shall enjoy the privileges and immunities accorded to experts on missions under Article VI of the General Convention" (No. 137). Such participants included persons nominated by Governments and "experts invited by the United Nations to serve as speakers as well as provide substantive contributions to the attainment of the objectives of the Meeting" (*ibid.*, Arts. II.1 *(a)*, *(c)* and V.2).

72. In a memorandum dated 24 January 1989 to the United Nations Children's Fund on the subject of assignment of United States Government civil servants to UNICEF, the United Nations Office of Legal Affairs determined that such loaned individuals are experts on missions and may be issued United Nations Certificates for the purpose of official travel (No. 138).

73. In a letter dated 1 March 1989 to the United Nations Office at Geneva regarding the status of French military personnel participating in the multinational de-mining missions in Afghanistan, the United Nations Office of Legal Affairs determined that such personnel are considered as experts on missions within the meaning of Article VI of the General Convention (No. 139).

74. In a letter dated 1 May 1989 to the President of the United Nations Administrative Tribunal, the Legal Counsel addressed the question of the status of members of the Tribunal and indicated *inter alia* that members of the Tribunal are experts on missions for the United Nations and are thus covered by the provisions of Sections 22, 23 and 26 of the General Convention (No. 140).

75. Nos. 141, 141A and 142 are samples of standard Special Service Agreements (SSAs) for experts and for consultants. These forms specify that the persons entering into such agreements with the United Nations for the purpose of performing functions assigned by the latter are regarded as experts on missions.

76. In 1967 the United Nations Secretariat prepared for the use of the International Law Commission a study on the practice of the United Nations, the Specialized Agencies and the International Atomic Energy Agency concerning their status, privileges and immunities. This study was subsequently brought up to date in 1985. Nos. 143 and 144 are relevant extracts from these studies.

Introduction to Part IV

General Materials

77. Part IV contains materials relevant to the terms of reference of the Commission and the Sub-Commission; descriptions of the work and organization of the Commission and the Sub-Commission; and a copy of the Rules of Procedure of the Functional Commissions of the Council.

78. The Commission on Human Rights is a functional commission established pursuant to Article 68 of the United Nations Charter as a subsidiary organ of the Council. Its basic terms of reference were embodied in Council resolutions 5 (I) and 9 (II) adopted respectively on 16 February and 21 June 1946 (Nos. 145 and 146). The Commission, originally made up of 18 members charged particularly with the task of drafting the International Bill of Human Rights, is now composed of the representatives of 43 Member States elected for three-year terms. It meets each year for a period of six weeks, and it operates under the Rules of Procedure of the Functional Commissions of the Council (No. 157).

79. On 21 June 1946 the Council by its resolution 9 (II) authorized the Commission to establish sub-commissions on the protection of minorities and on the prevention of discrimination (No. 146) which were then immediately merged. The basic terms of reference were given by the Commission at its fifth session (No. 147). On the basis of that initial mandate, some standing resolutions of the Council and the Commission were subsequently adopted which expanded the tasks of the Sub-Commission (e.g., Council resolutions 1235 (XLII) and 1503 (XLVIII); Commission resolutions 8 (XXII) and 13 (XXIII)). By its resolution 17 (XXXVII), adopted in 1981, the Commission reconfirmed the tasks of the Sub-Commission (No. 153). Originally, the Sub-Commission had 12 members, but this was subsequently expanded to 14 in 1959, 18 in 1965 and 26 in 1969 (Commission resolution 9 (XXIV) and Council resolution 1334 (XLIV)).

80. While the status of members of the Sub-Commission as acting in their individual capacity is not expressly provided in the initial terms of reference, this has been expressly specified by the Sub-Commission itself and confirmed by the Commission and the Council. The issue was discussed during the third, fourth and fifth sessions of the Sub-Commission (Nos. 148 and 149). This was reaffirmed at its thirtieth session in 1977 (Nos. 151 and 152). The Council itself also confirmed such status (No. 154). The Council in its resolution 1986/35 established new procedure for the election of members of the Sub-Commission (No. 155).

81. No. 156 contains general descriptions of the work and organization of the Sub-Commission and of the Commission.

82. No. 158 contains General Assembly resolution 89 (I) authorizing the Council to request advisory opinions of the International Court of Justice.

29 September 1989.

Introduction to Part V

Materials Relating to Developments Following the Request by the Economic and Social Council for an Advisory Opinion

83. Part V contains materials pertaining to developments in the forty-first session of the Sub-Commission which was held in Geneva from 7 August to 1 September 1989.

84. Mr. Mazilu's report was published as received, as document E/CN.4/Sub.2/1989/41 (No. 159). The text also received from Mr. Mazilu entitled "A Special View on the Romanian Case" was published as an addendum to the report (No. 160).

85. On 15 August 1989, the Permanent Mission of Romania to the United Nations Office at Geneva requested the circulation of a Note Verbale addressed to the Centre for Human Rights, as a document of the Sub-Commission (No. 161). In this Note, the Romanian Mission expressed its surprise at the Secretariat's decision to publish the report, and, *inter alia*, questioned Mr. Mazilu's "intellectual capacity" to make "objective analysis" *(ibid.)*.

86. At its second meeting held on 8 August 1989, the Sub-Commission decided, in accordance with its established practice, to invite Mr. Mazilu to participate in the meetings at which his report was to be considered (Nos. 162, para. 8, and 165). At its 10th meeting held on 14 August 1989, the Secretariat reported that no reply had been received from Mr. Mazilu to the invitation extended (No. 169).

87. Mr. Mazilu's whereabouts was raised by some experts in several meetings of the Sub-Commission. Some members expressed the view that his presence was needed for the discussion of the report (Nos. 164-169, 176-177). Some members also expressed their views about the contents of Mr. Mazilu's report *(ibid.)*.

88. On 30 August, Mr. Diaconu, the expert from Romania, made a statement at the Sub-Commission, regarding the report of Mr. Mazilu (No. 172). The Secretariat made a statement in response to Mr. Diaconu's statement (No. 173).

89. At its 40th meeting held on 1 September 1989, the Sub-Commission adopted (by 12 votes to 4 with 2 abstentions), resolution 1989/46, entitled "The Report on Human Rights and Youth Prepared by Mr. Dumitru Mazilu" (Nos. 163, 174 and 175). The Sub-Commission *inter alia* requested Mr. Mazilu to update his report and present it in person to the Sub-Commission at its forty-second session.

CONTENTS OF THE DOSSIER

Part I. Materials Relating to the Proceedings Leading to the Request by the Economic and Social Council for an Advisory Opinion

1. Commission on Human Rights: Fortieth Session (Geneva, 6 February-16 March 1984)

1. Note by the Secretary-General concerning nominations of candidates for election to membership of the Sub-Commission on Prevention of Discrimination and Protection of Minorities[1]	E/CN.4/1984/47 and extract from Addendum

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E/1984/14
E/CN.4/1984/77

1A. Report on the Fortieth Session: Chapter XXIV. Election of Members of the Sub-Commission on Prevention of Discrimination and Protection of Minorities

609. The Commission considered agenda item 24 at its 53rd meeting, on 13 March 1984[2].

610. The Commission had before it the following documents:

Note by the Secretary-General containing nominations of candidates for election to membership of the Sub-Commission and biographical data on the candidates (E/CN.4/1984/47 and Add.1-7);

Letter dated 23 February 1984 from the representative of Democratic Kampuchea addressed to the Chairman of the Commission on Human Rights (E/CN.4/1984/64).

611. The attention of the Commission was drawn to Economic and Social Council resolution 1983/32 of 27 May 1983 concerning the election of alternates.

612. The Commission elected by secret ballot the 26 members of the Sub-Commission on Prevention of Discrimination and Protection of Minorities. The following candidates were elected:

African States

Mr. Driss Dahhak	Morocco
Mr. Mohamed Sbihi*	

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[1] Document not reproduced. *[Note by the Registry.]*

[2] For the summary record, see E/CN.4/1984/SR.53, and E/CN.4/1984/SR.1-63/Corrigendum, as appropriate.

Mr. G. Dove Edwin Mr. O. O. George*	Nigeria
Mr. Aidid A. Ilkahanaf	Somalia
Mr. Ahmad Khalifa	Egypt
Mr. C. L. C. Mubanga-Chipoya Miss Beatrice Mulamfu*	Zambia
Mr. K. B. S. Simpson Mrs. Kate Abankwa*	Ghana
Mr. Fisseha Yimer	Ethiopia
Asian States	
Mr. Awn S. Al Khasawneh	Jordan
Mr. Murlidhar C. Bhandare	India
Mr. A. Sayeed Chowdhury	Bangladesh
Mr. Masayuki Takemoto Mr. Nisuke Ando*	Japan
Mrs. Gu Yijie Mr. Li Daoyu*	China
Eastern European States	
Mr. Dumitru Mazilu Mr. Mircea Nicolae*	Romania
Mr. Vsevolod N. Sofinsky Mr. Viktor M. Tchikvadze*	Union of Soviet Socialist Republics
Mr. Ivan Toševski Mr. Danilo Türk*	Yugoslavia
Latin American States	
Mr. Enzio Giustozzi Mr. Leandro Despouys*	Argentina
Mr. Miguel A. Martínez Mr. Julio Heredia Pérez*	Cuba
Mr. Antonio Martínez Báez Mr. Héctor Fix Zamudio*	Mexico
Mr. A. J. Uribe Portocarrero Mr. Fernando Cepeda Ulloa*	Colombia
Mr. R. Valdez Baquero Mr. M. Alemán Salvador*	Ecuador
Western European and Other States	
Mr. Marc Bossuyt Mr. Patrick Dubois*	Belgium
Mrs. Erica-Irene A. Daes	Greece
Mr. Jules Deschênes Mrs. Rita Cadieux*	Canada
Mr. Louis Joinet Mr. Alain Pellet*	France

Mr. John P. Roche Mr. John Carey*	United States of America
Mr. Benjamin Whitaker Mr. John Montgomery*	United Kingdom of Great Britain and Northern Ireland

* Alternate.

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2. Summary Record of the 53rd meeting (held at the Palais des Nations, Geneva, on Tuesday, 13 March 1984, at 3 p.m.)[1] — E/CN.4/1984/SR.53

2. Commission on Human Rights: Forty-first Session (Geneva, 4 February-15 March 1985)

E/1985/22
E/CN.4/1985/66.

3. Report on the Forty-first Session: Resolution 1985/13. The Role of Youth in the Field of Human Rights, Particularly in Achieving the Objectives of the International Youth Year: Participation, Development, Peace[2]

The Commission on Human Rights,

Recalling that 1985 is the fortieth anniversary of the United Nations,

Aware that peace constitutes one of the principal aspirations of mankind and that the attainment and preservation of peace is a universal responsibility,

Bearing in mind that the Charter of the United Nations expresses the determination of the peoples to save succeeding generations from the scourge of war and to reaffirm faith in the equal rights of all without any distinction and to practise tolerance and live together in peace with one another as good neighbours,

Considering that the Universal Declaration of Human Rights proclaims that recognition of the inherent dignity and of the equal rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Recalling that the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights proclaim that everyone has the right to life, liberty and security of person,

Emphasizing the necessity to ensure full enjoyment by youth of the rights stipulated in the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights and all other relevant international instruments, as

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[1] Document not reproduced. *[Note by the Registry.]*
[2] Adopted at the 51st meeting, on 11 March 1985, without a vote. See Chap. XV.

indispensable for human dignity and the free development of the human personality,

Convinced of the importance of preserving peace and ensuring the inherent right of every human being to life,

Stressing the particular importance of ensuring the active participation of youth in promoting the right to life as well as international peace and co-operation,

Welcoming the contribution of youth to the promotion of the ideals of peace and international co-operation, human rights and fundamental freedoms, the exercise of the right to self-determination, the elimination of colonialism, racism, racial discrimination and *apartheid* and the promotion of human solidarity and dedication to the objectives of progress and development,

Welcoming also the contribution of youth to achieving progressively the full realization of economic, social and cultural rights,

Recognizing the importance of the direct participation of youth in shaping the future of mankind and the valuable contribution that youth can make to the implementation of the new international economic order based on equality and justice,

Recalling the emphasis placed in the Universal Declaration of Human Rights on teaching and education, aimed at promoting human rights and fundamental freedoms,

Appreciating the efforts undertaken in preparation for the International Youth Year: Participation, Development, Peace by the General Assembly, the Advisory Committee for the International Youth Year and the Centre for Social Development and Humanitarian Affairs, which is a focal point for the related activities,

Reaffirming the objectives of the International Youth Year: Participation, Development, Peace, as well as their interdependence,

Mindful of the important role of youth in the field of human rights,

1. *Reaffirms* the role of youth in promoting the full and effective enjoyment of the entire range of human rights and fundamental freedoms for all;
2. *Reaffirms also* the fact that youth attaches crucial importance to the promotion of international peace and co-operation, the full and effective enjoyment of human rights and fundamental freedoms and the establishment of a new international economic order;
3. *Appeals* to all Governments to consider appropriate measures to ensure that young people have equal opportunities to participate in the economic, social, cultural, civil and political life of society as well as in the endeavour to promote human rights and fundamental freedoms, international peace and co-operation, understanding, tolerance and friendship among all nations;
4. *Requests* the Sub-Commission on Prevention of Discrimination and Protection of Minorities to pay due attention to the role of youth in the field of human rights, particularly in achieving the objectives of the International Youth Year: Participation, Development, Peace, and taking into consideration the Specific Programme of Measures and Activities to be undertaken prior to and during the International Youth Year[1];

[1] A/36/215, Annex, Sec. IV, decision 1 (I).

5. *Requests* the Secretary-General, in consultation with the relevant specialized agencies, to give special emphasis in 1985, as International Youth Year, to educational materials and programmes for youth, in the light of its objectives, "Participation, Development, Peace", as key elements in the ongoing promotional activities of the United Nations in the field of human rights;

6. *Decides* to consider the matter at its forty-third session under the item "The role of youth in the promotion and protection of human rights, including the question of conscientious objection to military service".

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4. Report of the forty-first session: Chap. XV. The role of youth in the promotion and protection of human rights including the question of conscientious objection to military service (paras. 376-385)[1]	E/1985/22 E/CN.4/1985/66
5. Summary record of the 51st meeting (first part) (held at the Palais des Nations, Geneva, on Monday, 11 February 1984, at 3 p.m.) (paras. 12-22)[1]	E/CN.4/1985/SR.51

3. Sub-Commission on Prevention of Discrimination and Protection of Minorities: Thirty-eighth Session (Geneva, 5-30 August 1985)

E/CN.4/1986/5
E/CN.4/Sub.2/1985/57.

6. Report on the Thirty-eighth Session: Resolution 1985/12. Human Rights and Youth[2]

The Sub-Commission on Prevention of Discrimination and Protection of Minorities,

Recalling General Assembly resolutions 38/21 of 22 November 1983 and 39/21 of 23 November 1984 which have underlined the importance of undertaking concerted action programmes in favour of youth,

Bearing in mind Economic and Social Council resolution 1985/27 of 29 May 1985 regarding the measures for securing the implementation and enjoyment by youth of human rights, particularly, the right to life, education and work and its resolution 1985/30 of 29 May 1985 concerning co-ordination and information in the field of youth,

Recalling the Commission on Human Rights resolution 1985/13 of 11 March 1985 emphasizing the necessity to ensure full enjoyment by youth of the rights stipulated in all relevant international instruments as indispensable for human

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[1] Document not reproduced. *[Note by the Registry.]*
[2] Adopted at the 37th meeting, on 29 August 1985, without a vote. See Chap. XVI.

dignity and the free development of the human personality, and requesting the Sub-Commission on Prevention of Discrimination and Protection of Minorities to pay due attention to the role of youth in the field of human rights,

1. *Requests* Mr. Dumitru Mazilu, in order to facilitate the Sub-Commission's discussion of the topic, to prepare a report on human rights and youth analysing the efforts and measures for securing the implementation and enjoyment by youth of human rights, particularly, the right to life, education and work;
2. *Requests* the Secretary-General to provide all necessary assistance to Mr. Dumitru Mazilu for the completion of this task;
3. *Decides* to deal with the question of "Human Rights and Youth" under its item: "Promotion, protection and restoration of human rights at national, regional and international levels" at its thirty-ninth session.

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7. "Administrative and Programme Budget Implications of the Draft Resolution Contained in Document E/CN.4/Sub.2/1985/L.23" (in particular para. 6)[1] E/CN.4/Sub.2/1985/L.69

4. Relevant Correspondence and Communications between 18 March 1986 and 15 May 1987

8. Letter Dated 18 March from Mr. Mazilu to the Centre for Human Rights

18 March 1986.

I am writing to let you know that the Sub-Commission on Prevention of Discrimination and Protection of Minorities has decided to entrust me with the preparation of the Report on Human Rights and Youth for the next session of the Sub-Commission.

In order to facilitate the elaboration of this report I will be available for consultations with the Centre for Human Rights in Geneva any time in May or in the first part of June.

If the above is agreeable, please make all necessary arrangements for my round trip between Bucharest and Geneva. I would also appreciate if you will send me a letter of invitation for such consultations with the Centre.

(Signed) Dumitru MAZILU.

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9. Letter Dated 6 May 1986 from the Chief, Research, Studies and Prevention of Discrimination Section, Centre for Human Rights, to Mr. Mazilu

6 May 1986.

I would like to refer to your letter of 18 March 1986, addressed to Mr. Herndl, in which you indicate your availability for consultations with the Centre

[1] Document not reproduced. *[Note by the Registry.]*

this coming May or June in connection with the report on human rights and youth that the Sub-Commission requested you to prepare in its resolution 1985/12.

I am pleased to inform you that you will be provided with a round-trip air ticket from Bucharest to Geneva and payment of *per diem* for a period of five working days. I would also suggest that your visit be scheduled for the period 26 to 30 May 1986. In order to make the necessary arrangements, I would be grateful if you could let us know as soon as possible, if those days are convenient for you.

(Signed) Emmanuel MOMPOINT.

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10. Letter Dated 5 June 1986 from the Chief, Research, Studies and Prevention of Discrimination Section, Centre for Human Rights, to Mr. Mazilu

5 June 1986.

I should like to refer to my letter of 6 May and to Mr. Herndl's letter of 28 May 1986 informing you that the General Assembly, at its resumed fortieth session, adopted a number of economy measures including the deferral to 1987 of meetings already scheduled.

As a result of the Assembly's decision, the thirty-ninth session of the Sub-Commission and its working groups, scheduled to be held this August, will not take place. However, the Assembly's decision will not affect the pace of work as regards the preparation of documents to be submitted to the thirty-ninth session of the Sub-Commission. As to the preparation of your report, I would appreciate your informing us whether you intend to come to Geneva for consultations so that arrangements for your travel and stay could be made in time.

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11. Letter Dated 8 October 1986 from the Chief, Research, Studies and Prevention of Discrimination Section, Centre for Human Rights, to Mr. Mazilu

8 October 1986.

First, let me say how much I regret that because of the current financial crisis we have not had the resources to underwrite your trip to Geneva for consultations on the report on human rights and youth which you are requested to submit to the next session of the Sub-Commission. It is our hope that sufficient funds will be available in the 1987 allotments to enable you to come.

In the meantime I am writing to you in order to determine how the secretariat can be of assistance to you in the preparation of your report, which we consider to be one of the most important that will be before the next session of the Sub-Commission. We are, of course, aware of your great experience and knowledge in the subject-matter but we would nevertheless like to assist you in any way we can.

The Sub-Commission's resolution calls for a report on human rights and youth analysing the efforts and measures for securing the implementation and enjoyment by youth of human rights, particularly, the right to life, education

and work. The wording of that paragraph as well as references in the preambule indicate a desire by the Sub-Commission to be informed of steps which are or can be taken to give reality to the human rights of youth, especially those expressly mentioned.

Basic information on what is being done or can be done both on the national and international levels might be obtained from the specialized agencies, selected parts of the United Nations Secretariat, regional intergovernmental organizations and youth-oriented NGOs. We may also think of contacting the World Bank, UNIDO, the EEC, COMECON and the Interamerican Development Bank in order to determine what steps they take to favour youth in their respective programmes; this would at least make them aware of the importance of the subject.

Should you wish, we can send requests for information as background material for your study to those indicated and to any others you might suggest. In this regard, and should you so wish, we could seek information via note verbale from Governments.

The Centre for Human Rights already has in its files much information on certain specific violations of human rights which can strike youth in particular. I think of, among others, the reports on disappearances; in some situations young people have been specific targets of disappearances. Other areas for review might be arbitrary and summary executions, torture and any information received regarding detention of young persons. Finally, in certain country situations youth find themselves especially victimised by violations; I think of the impact of *apartheid* on youth in South Africa.

The various reports of the Centre in these areas may be studied to describe the specificity of violations of human rights of youth and perhaps suggest some specific remedies. Should the Centre's files be incomplete on any important point we would, of course, make appropriate efforts to obtain the needed facts.

I would be most anxious to hear from you on these matters and on any other things we might do to assist you so that we may begin at the earliest opportunity.

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12. A (Sample) Note Verbale Dated 9 January 1987 to Governments

9 January 1987.

The Secretary-General of the United Nations presents his compliments to the Minister for Foreign Affairs and Tourism of the Commonwealth of the Bahamas and has the honour to refer to Sub-Commission on Prevention of Discrimination and Protection of Minorities resolution 1985/12 of 29 August 1985, entitled "Human Rights and Youth". A copy of the resolution is attached.

In paragraph 1 of the resolution, the Sub-Commission requested one of its members, Mr. Dumitru Mazilu, in order to facilitate the Sub-Commission's discussion of the topic, to prepare a report on human rights and youth analysing the efforts and measures for securing the implementation and enjoyment by youth of human rights, particularly the right to life, education and work. Mr. Mazilu intends to submit his report to the thirty-ninth session of the Sub-Commission scheduled to be held from 10 August to 4 September 1987.

The Special Rapporteur would welcome any relevant information and observations that His Excellency's Government may wish to make on the subject of youth and human rights. The Secretary-General would be grateful if such infor-

mation could, if possible, be forwarded to the Centre for Human Rights, United Nations Office at Geneva, CH-1211 Geneva 10, by 30 March 1987.

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13. Letter Dated 15 May 1987 from the Research and Studies Unit, Prevention of Discrimination and Protection of Minorities Section, Centre for Human Rights, to Mr. Mazilu Transmitting Information Received in Response to the Notes Verbales of 9 January 1987

15 May 1987.

In connection with the study on human rights and youth, you will find enclosed herewith relevant information from the Governments of Bangladesh, Chad, Chile, German Democratic Republic, Mexico, Panama and Spain, as well as from the International Labour Office, the African Association of Education for Development, Pax Christi International and the Law Association for Asia and the Pacific. I am sending you under separate cover the following International Labour Office publications: the reports of the Director-General to the 68th and 69th sessions of the International Labour Conference: a report on the changing world of work and another on youth submitted to the 72nd session of the International Labour Conference, together with the provisional record of this session dealing with its fifth item on the agenda: youth; a general survey on minimum age by the Committee of Experts on the Application of Conventions and Recommendations; a resolution concerning young people and the ILO's contribution to International Youth Year; and a paper on social security protection of youth.

(Signed) Etty LEISERSON.

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5. The Economic and Social Council: Organizational Session for 1987 (New York, 3-6 February 1987)

14. Decision 1987/102. Term of Office of the Current Members of the Sub-Commission on Prevention of Discrimination and Protection of Minorities, Adopted on 6 February 1987

At its 3rd plenary meeting, on 6 February 1987, the Economic and Social Council, taking note of General Assembly resolution 41/143 of 4 December 1986, decided:

(a) To extend the term of office of the current members of the Sub-Commission on Prevention of Discrimination and Protection of Minorities for one year to ensure their participation in the thirty-ninth session of the Sub-Commission, to be held in 1987;

(b) To postpone until the forty-fourth session of the Commission on Human Rights, in 1988, the election of new members of the Sub-Commission scheduled to be held during the forty-third session of the Commission, in 1987, and to ensure that the election is governed by the procedure established in Economic and Social Council resolution 1986/35 of 23 May 1986;

(c) That the newly elected members of the Sub-Commission should begin to exercise their mandate, in accordance with current practice, immediately following that election.

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6. Commission on Human Rights: Forty-third Session (Geneva, 2 February-13 March 1987)

15. Resolution 1987/44. The Role of Youth in the Field of Human Rights, Particularly in Achieving the Objectives of the International Youth Year: Participation, Development, Peace, Adopted on 10 March 1987

The Commission on Human Rights,

Recalling its resolution 1985/13 of 11 March 1985 and General Assembly resolutions 40/14 of 18 November 1985 and 41/97 of 4 December 1986,

Aware that peace constitutes one of the principal aspirations of mankind and that the attainment and preservation of peace is a universal responsibility,

Bearing in mind that the Charter of the United Nations expresses the determination of the peoples to save succeeding generations from the scourge of war and to reaffirm faith in the equal rights of all without any distinction and to practise tolerance and live together in peace with one another as good neighbours,

Considering that the Universal Declaration of Human Rights proclaims that recognition of the inherent dignity and of the equal rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Recalling that the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights proclaim that everyone has the right to life, liberty and security of person,

Recognizing the profound importance of the direct participation of youth in shaping the future of mankind and the valuable contribution that youth can make in all sectors of society, including in the field of human rights, as well as its willingness to express its ideas concerning the building of a better and more just world in which it can attain the objectives of the International Youth Year: Participation, Development, Peace, proclaimed for 1985,

Emphasizing the necessity to ensure full enjoyment by youth of the rights stipulated in the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights and all other relevant international instruments, as indispensable for human dignity and the free development of the human personality,

Convinced of the importance of preserving peace and ensuring the inherent right of every human being to life,

Stressing the particular importance of ensuring the active participation of youth in promoting the right to life as well as international peace and co-operation,

Welcoming the contribution of youth to the promotion of the ideals of peace and international co-operation, human rights and fundamental freedoms, the

exercise of the right to self-determination, the elimination of colonialism, racism, racial discrimination and *apartheid* and the promotion of human solidarity and dedication to the objectives of progress and development,

Recognizing the valuable contribution that youth can make to the implementation of the new international economic order based on equality and justice,

Recalling the emphasis placed in the Universal Declaration of Human Rights on teaching and education, aimed at promoting human rights and fundamental freedoms,

Expressing its appreciation to the General Assembly, the Advisory Committee for the International Youth Year and the Centre for Social Development and Humanitarian Affairs for their important contribution to the whole process of preparation and observance of the International Youth Year,

Reaffirming the objectives of the International Youth Year: Participation, Development, Peace, and taking note of the guidelines for further planning and suitable follow-up in the field of youth, endorsed by the General Assembly in 1985 (A/40/256, annex) in order to maintain the impetus generated by the Year,

Mindful of the important role of youth in the field of human rights,

1. *Reaffirms* the role of youth in promoting the full and effective enjoyment of the entire range of human rights and fundamental freedoms for all;

2. *Reaffirms also* the fact that youth attaches crucial importance to the promotion of international peace and co-operation, the full and effective enjoyment of human rights and fundamental freedoms and the establishment of the new international economic order;

3. *Appeals once again* to all Governments to consider appropriate measures to ensure that young people have equal opportunities to participate in the economic, social, cultural, civil and political life of society as well as in the endeavour to promote human rights and fundamental freedoms, international peace and co-operation, understanding, tolerance and friendship among all nations;

4. *Takes note with appreciation* of resolution 1985/12 of the Sub-Commission on Prevention of Discrimination and Protection of Minorities of 29 August 1985, in which the Sub-Commission requested one of its members to prepare a report on human rights and youth analysing the efforts and measures for securing the implementation and enjoyment of human rights by youth, particularly the right to life, education and work, and to submit it to the Sub-Commission at its thirty-ninth session;

5. *Requests* the Secretary-General to provide all necessary assistance to the Rapporteur of the Sub-Commission on human rights and youth for completion of this task;

6. *Decides* to consider the matter at its forty-fifth session under the agenda item "The role of youth in the promotion and protection of human rights, including the question of conscientious objection to military service".

54th meeting
10 March 1987

[Adopted by a roll-call vote of 34 to none, with 8 abstentions. See Chap. XV.]

16. Report on the forty-third session: Chap. XV. The role of youth in the promotion and protection of human rights, including the question of conscientious objection to military service (paras. 457-463)[1] E/1987/18 E/CN.4/1987/60

7. Correspondence on 14 May 1987

17. Letter Dated 14 May 1987 from the Officer-in-Charge, Research, Studies and Prevention of Discrimination Section, Centre for Human Rights, to Mr. Mazilu

14 May 1987.

I have the honour to send you herewith an information annex concerning your travel entitlements in connexion with your attendance at the thirty-ninth session of the Sub-Commission on Prevention of Discrimination and Protection of Minorities, which will meet at the United Nations Office at Geneva from 10 August to 4 September 1987 and at the meetings of the Working Groups on Slavery (as a member) and on Indigenous Populations (as an alternate) which will also be held in Geneva from 3 to 7 August 1987.

In view of the time required to make the necessary travel arrangements, we would appreciate it if you could forward details to us at least four weeks in advance as to your proposed means of travel and anticipated dates of departure and arrival, as well as your contact address and telephone number. This information may be forwarded to the Centre for Human Rights, United Nations Office, Geneva, Switzerland. The United Nations will then take steps to provide you with the necessary air tickets.

A copy of the provisional agenda for the thirty-ninth session of the Sub-Commission and all other documents will be forwarded to you as soon as they become available. The report of the Sub-Commission at its thirty-eighth session as well as the texts of the resolutions adopted by the Commission on Human Rights at its forty-second and forty-third sessions which contain provisions of direct relevance to the work of the Sub-Commission will be sent to you under separate cover.

If you have any further questions regarding arrangements for the forthcoming session of the Sub-Commission, please do not hesitate to write to us.

(Signed) Enayat HOUSHMAND.

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[1] Document not reproduced. *[Note by the Registry.]*

8. Sub-Commission on Prevention of Discrimination and Protection of Minorities: Thirty-ninth Session (Geneva, 10 August-4 September 1987)

E/CN.4/Sub.2/1987/SR.5
17 August 1987.

18. Summary Record of the 5th Meeting

Held at the Palais des Nations, Geneva,
on Wednesday, 12 August 1987, at 4 p.m.

Chairman: Mr. Despouy

The meeting was called to order at 4.20 p.m.

REVIEW OF FURTHER DEVELOPMENTS IN FIELDS WITH WHICH THE SUB-COMMISSION HAS BEEN CONCERNED (agenda item 4) *(continued)* (E/CN.4/Sub.2/1987/3, E/CN.4/Sub.2/1987/4 and E/CN.4/Sub.2/1987/5)

[Paras. 1-13 not reproduced]

14. [*Mr. Houshmand* (Representative of the Secretary-General)]. Finally, with regard to the attendance of experts at the Sub-Commission's sessions, on the basis of information received by the Secretariat, he was able to announce that Mr. Al Khasawneh and Mr. Valdez Baquero had just arrived in Geneva and should be able to participate in the work of the Sub-Commission as of its next meeting. In the case of Mr. Uribe Portocarrero and his alternate, Mr. Cepeda Ulloa, the Secretariat had been informed that they would not be able to attend the present session. In the case of Mr. Mazilu, the Secretariat had just received a letter from the Permanent Mission of Romania, confirming that he had suffered a heart attack last June and, being still in hospital, would not be able to travel to Geneva.

[Paras. 15-16 not reproduced]

17. *Mrs. Daes* thanked the representative of the Secretary-General for the very useful information he had communicated to the Sub-Commission. She inquired, since Mr. Mazilu had suffered a heart attack, why his alternate, Mr. Nicolae had not come instead. Three experts usually represented the region to which Romania belonged; only two were present at the current session, in consequence of which the result of some decisions might be distorted. She would also like to see the letter transmitted by the Permanent Mission of Romania.

18. *Mr. van Boven* commented that it was usual for correspondence to be exchanged directly between experts and the Sub-Commission, without involving the Permanent Missions of Governments. Consequently, he also had reservations as to the manner in which the Secretariat had been informed that Mr. Mazilu would not participate in the work of the Sub-Commission.

[Paras. 19-23 not reproduced]

24. *Mr. Whitaker*, supported by *Mr. Joinet*, thought that the Chairman should try to make direct contact with Mr. Mazilu by telephoning him at the hospital in order to wish him a speedy recovery.

25. *Mr. Alfonso Martínez* said that all the other members of the Sub-

Commission who had made their excuses would then have to be treated in the same way and without any discrimination.

26. *Mr. Sofinsky* thought that when a person was hospitalized for a serious reason, it was advisable to consult his physicians before trying to telephone him. While the Sub-Commission was frequently urged not to politicize the issues it debated, heart attacks were now apparently beginning to be a political issue! He agreed with Mr. Alfonso Martínez that the same treatment should be applied to all members of the Sub-Commission who were absent at the opening of a session or who left before it closed.

27. *Mr. Houshmand* (Representative of the Secretary-General) said that the members of the Sub-Commission could, if they so wished, read the letter transmitted that very morning by the Permanent Mission of Romania to the United Nations Office at Geneva confirming that Mr. Mazilu had suffered a heart attack in June and was still in hospital. The Permanent Mission of Romania had also indicated that Mr. Mazilu's alternate, Mr. Nicolae, was unable to take part in the work of the Sub-Commission because he had been assigned another mission of a completely different nature in New York.

28. As a general rule, the Secretariat made direct contact with the members of the Sub-Commission. After having tried unsuccessfully to reach Mr. Mazilu at his home, the Secretariat had been informed by the Romanian Ministry of Foreign Affairs that the Permanent Mission of Romania to the United Nations Office at Geneva would give the necessary explanations. That had been done in the aforementioned letter.

29. *Mr. Alfonso Martínez* inquired whether the Secretariat had also received explanations in respect of Mr. Uribe Portocarrero, Mr. Valdez Baquero and Mr. Al Khasawaneh. In the case of Mr. Mazilu, the Sub-Commission had at least been informed of the reasons for his absence. He also inquired whether the adoption by the Sub-Commission of a specific procedure would involve financial implications.

30. *Mr. Houshmand* (Representative of the Secretary-General) stated that Mr. Uribe Portocarrero had indicated that he would not be able to take part in the work of the current session because he did not wish to leave his sick wife. The Secretariat had therefore contacted his alternate, Mr. Cepeda Ulloa, who had written back to say that he would not be able to come to Geneva either because he had just been appointed Minister of Communications. He understood that Mr. Al Khasawaneh and Mr. Valdez Baquero had just arrived in Geneva and should be able to be present in the Sub-Commission the following day.

31. *Mr. Simpson* inquired whether the Secretariat had received explanations concerning the absence of the expert from Nigeria, Mr. Dove-Edwin.

32. *Mr. Houshmand* (Representative of the Secretary-General) said that Mr. Dove-Edwin had not replied to the cables and letters sent to him by the Secretariat. As the Permanent Mission of Nigeria to the United Nations Office at Geneva had indicated on the previous day that Mr. Dove-Edwin would not be able to come to Geneva, the Secretariat would contact his alternate, Mr. George, immediately.

33. *Mr. van Boven* considered that it was unacceptable to imply that certain members of the Sub-Commission were seeking to make political capital out of the absence of certain experts. The Sub-Commission was genuinely concerned by those absences and he knew from experience that individuals had on occasion been prevented from taking part in certain meetings for purely political reasons. It was therefore entirely justified in pondering the real reasons for the absence of certain experts. It was to be hoped that other United Nations bodies would show the same concern. While it was sometimes perfectly proper to plead illness

in order to justify someone's absence, it was equally obvious that there were occasions when the plea of illness was merely a pretext.

34. *Mrs. Daes* said that she agreed entirely with Mr. van Boven. By putting forward candidates for election to the Sub-Commission, the many Governments represented at the current session by observers had undertaken to simplify the work of the Sub-Commission. Two years previously, the Sub-Commission had adopted a resolution on alternates. Why did those Governments that were so ready to criticize the work of the Sub-Commission not try to simplify its task by allowing alternates such as Mr. George to attend the sessions of the Sub-Commission? She was particularly anxious to see Mr. Mazilu, who had clearly indicated his intention of submitting the study assigned to him in his capacity as Special Rapporteur.

35. *Mr. Alfonso Martínez* said that he thought its very nature should make the Sub-Commission proceed in a way that was non-discriminatory vis-à-vis all its members. One might well wonder why no one was concerned about the absence of the expert from Somalia, Mr. Ilkahanaf, who had not attended the Sub-Commission's sessions for two years. Also, the reasons preventing Mr. Giustozzi and Mr. Roche from participating in the Sub-Commission's work had not always been easy to understand. He was therefore surprised that for the first time the Sub-Commission deemed it necessary to take measures that year in respect of the absence of certain experts. However, the procedure followed must be the same for all.

36. *Mr. Joinet* recalled the existence of a precedent in that domain since the Sub-Commission had in the past taken a decision concerning one of its members who had disappeared when he had in fact been the chairman of a working group on disappearances. In an attempt to defuse the discussion, he proposed that at the opening of each session the Chairman should provide information on all experts who were absent.

37. *Mr. Yimer*, speaking on a point of order, moved the immediate closure of the debate under rule 50 of the rules of procedure.

38. *Mr. Joinet* said that he would not oppose the closure of the debate provided that the suggestion he had just made was taken into consideration.

39. *The Chairman* said that, if there was no objection, he would take it that the debate was closed and Mr. Joinet's proposal was adopted.

40. *It was so decided.*

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9. Correspondence and Communications between 18 August 1987 and 11 February 1988

19. Telex Dated 18 August 1987 under the Name of Mr. Mazilu, Addressed to the Chairman of the Sub-Commission

I would like to inform you with regret that I am not in the position to attend the current session of the Sub-Commission due to a heart illness. Now under medical care and unable to make any physical effort.

I also wish to mention that unfortunately my former alternate no longer involved in matters of Sub-Commission.

D. MAZILU.

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20. Letter Dated 3 November 1987 from the Under-Secretary-General for Human Rights to Mr. Mazilu

3 November 1987.

As you know your colleagues, members of the Sub-Commission on Prevention of Discrimination and Protection of Minorities, and your friends in the secretariat were deeply concerned by the news of your illness and inability to attend the most recent session of the Sub-Commission. We all hope that you are now well on the way to recovery and that you will be taking up your activities fully in the near future.

During the Sub-Commission regret was expressed that the Sub-Commission would not be able to consider the report on human rights and youth, particularly the right to life, education and work which you had been requested to prepare. Agenda item 14 under which your report was scheduled to be considered was postponed by the Sub-Commission in its decision 1987/112 to its coming fortieth session.

In view of the keen interest of the Sub-Commission and the non-governmental organization community in your report, I am writing to enquire if there is anything we may do to assist you in the preparation of this document. As in the past, we shall of course be sending you the information submitted by Governments, intergovernmental organizations and non-governmental organizations, and any other information which comes to our attention with regard to the subject of your report.

We would appreciate hearing from you at your earliest convenience concerning your plans with regard to this study. As you know, financial resources have been approved for a mission to Geneva by yourself in connection with the preparation of your report. We would be happy to discuss with you the most opportune time for this visit.

(Signed) Jan MARTENSON.

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21. Cable Dated 17 December 1987 from the Under-Secretary-General for Human Rights to Mr. Mazilu

17 December 1987.

Further to my letter of 3 November 1987 I would like to refer to the mandate entrusted to you by Sub-Commission resolution 1985/12 to prepare a report on human rights and youth particularly the right to life, education and work, for submission to the next session of the Sub-Commission in 1988.

I would be grateful if you could let me know what you propose to do regarding the preparation of the report and what we can do to assist you in your task. In order for the Centre to make the necessary arrangements, an urgent reply from you would be appreciated.

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22. Letter Postmarked 25 December 1987 from Mr. Mazilu to the Under-Secretary-General for Human Rights

First of all, I would like to convey to you and to all our colleagues my best wishes for a happy New Year!

Secondly, I ask you to be so kind and to send me all the documents that were adopted by the last session of the Sub-Commission.

Taking into account the fact that since 5 May 1986, I have no regular news from the Centre and I have not received the ordinary UN documents in our field (possibly they have been lost), I kindly request you to send me all materials and information through the UN Information Centre in Bucharest.

I am ready to continue co-operation with you in order to fulfil, in the best possible way, my duties to the Sub-Commission.

Please confirm the receipt of this letter.

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23. Letter Postmarked 29 December 1987 from Mr. Mazilu to the Under-Secretary-General for Human Rights

I would like to convey to you my best wishes for a very happy New Year!

Please accept, Mr. Under-Secretary-General, my sincere appreciation for your prodigious activity in the benefit of the noble causes of Human Rights and Peace in the world. Regarding my report on "Human Rights and Youth", I am ready to come to the Centre for consultations at 14 February 1988.

I have to inform you that I have now my own documentation for the report.

I have no documents from the Centre or from Governments (possibly they have been lost), but I need them as soon as possible. To this end, I ask you to be so kind and to send me these documents through the Director of the UN Information Centre in Bucharest with the receipt for confirmation.

It was unfortunate that I have not received the usual invitation and air ticket to the most recent session of the Sub-Commission.

If the proposed period for consultations would be agreeable for you, please let me know as soon as possible.

In the meantime, I will ask my authorities to give me permission to come to the Centre. It is my hope that I will receive it, in spite of the fact that since 5 May 1986, when I have received first invitation in connection with the preparation of my report, I have had no permission to come to the Centre.

In July and August 1987, I have tried very hard to obtain permission to come to the ordinary session of the Sub-Commission. But every effort was useless.

That is why, since 5 May 1986 it was impossible for me to perform my international duties as a member of the Sub-Commission.

Taking into account that my report is not a national but an international document and I have to prepare it in my personal capacity as an international independent expert, I hope that my authorities will approve my trip to the Centre.

I am determined to do everything possible to obtain permission to perform my duties as an international independent expert and to serve, to the best of my ability, the noble cause of Human Rights.

Please confirm the receipt of this letter.

Curriculum vitae[1].

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[1] Not reproduced. *[Note by the Registry.]*

24. Cable Dated 19 January 1988 from the Under-Secretary-General for Human Rights to the Acting Director, United Nations Information Centre, Bucharest

19 January 1988.

Reference study for the Sub-Commission on Prevention of Discrimination and Protection of Minorities on Human Rights and Youth.

You may perhaps know that the Sub-Commission on Prevention of Discrimination and Protection of Minorities in 1985 charged Mr. Dumitru Mazilu with preparing a report on Human Rights and Youth. This report is of importance to both the Commission on Human Rights and the Sub-Commission and I would appreciate very much your assistance in facilitating Mr. Mazilu's work on this project. In particular, it would be appreciated if you could transmit the message below to him and if you could act as a channel to provide him with a ticket for his trip to Geneva.

"Professor Dumitru Mazilu, Secretary-General of the United Nations Association of Romania, Str. General Praporgescu No. 27, Sectorul 2, Bucharest, COD 70131, Telephone 130001.

Wish to refer to the study of Human Rights and Youth which you are preparing pursuant to resolutions of the Commission on Human Rights and its Sub-Commission on Prevention of Discrimination and Protection of Minorities. This is a study to which both bodies attach great importance and in order to enable us to have it ready for the next session of the Sub-Commission it would be important for us to begin work on the text as soon as possible. For this reason I wish to invite you to come to the Centre for Human Rights in Geneva for consultations and preparation of your report, as foreseen at the time of adoption of the resolutions relating to your study. May I suggest the two-week period beginning Monday, 15 February 1988. Given the delay already experienced in preparing this report and the amount of material available, I believe a two-week period is necessary. We are issuing instructions relating to your travel and asking United Nations Information Centre in Bucharest to provide you with a ticket. Please inform us if you need hotel reservations for your stay and if there is anything else we may do to assist. Regards. Jan Martenson, Under-Secretary-General for Human Rights."

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25. Letter (Undated) from Mr. Mazilu to the Under-Secretary-General for Human Rights Transmitted by a Letter Dated 20 January 1988 from the Acting Director, United Nations Information Centre, Bucharest

20 January 1988.

I am pleased to enclose for your attention a letter from Professor Dumitru Mazilu which he hand-delivered to me on 15 January.

Professor Mazilu emphasized to me that he is prepared to travel to Geneva for the meeting and to remain in Geneva to finish the report. Whether he will be allowed to do so remains uncertain.

Since mail to Geneva via our New York pouch is slow, I am also sending copies of Professor Mazilu's letter through travellers (to Vienna this week and from Moscow to Geneva next week).

(Signed) Noël EICHHORN.

I would like to convey to you my best wishes for a very happy New Year!

Please accept, Mr. Under-Secretary-General, my sincere appreciation for your prodigious activity in the benefit of the noble causes of Human Rights and Peace in the world.

Regarding my report on human rights and youth, I am ready to come to the Centre for consultations at 14 February 1988.

I have to inform you that I have now my own documentation for the report.

I have no documents from the Centre or from Governments (possibly they have been lost), but I need them as soon as possible. To this end, I ask you to be so kind and to send me these documents through the Director of the UN Information Centre in Bucharest, receipt for confirmation.

It was unfortunate that I have not received the usual invitation and air ticket to the most recent session of the Sub-Commission.

If the proposed period for consultations would be agreeable for you, please let me know as soon as possible.

In the meantime, I will ask my authorities to give me permission to come to the Centre. It is my hope that I will receive it, in spite of the fact that since 5 May 1986 I have had no permission to come to the Centre.

In July and August 1987, I have tried very hard to obtain permission to come to the ordinary session of the Sub-Commission. But, every effort was useless.

That is why, since 5 May 1986 it was impossible for me to fulfil my international duties as a member of the Sub-Commission.

Taking into account that my report is not a national, but an international document and I have to prepare it in my personal capacity as an international independent expert, I hope that my authorities will approve my trip to the Centre.

I am determined to do everything possible to obtain permission to fulfil my duties as an international independent expert and to serve the noble cause of Human Rights.

P.S. Please confirm the receipt of this letter and transmit it to Mr. Leandro Despouy, the Chairman of the Sub-Commission, and to Mrs. Erika-Irene Daes, former Chairman of the Sub-Commission.

1. Since 5 May 1986 I have had *no* permission to go to the Centre for Human Rights for consultations, in order to prepare my report on "Human Rights and Youth".

2. Since 5 May 1986 I have *no* news from the Centre, in spite of the fact that I sent 14 letters through which I have informed my friends in Geneva about my unusual situation.

Possibly these letters have been lost?!

3. Because of this impossible situation, I have suffered very much. In 1987, for two times, I was in hospital.

4. Since 1 December 1987, I have been forced *to retire* from my activity, as Minister-Counsellor and Head of Legal Department (compartment) in the Ministry of Foreign Affairs.

5. Finally, after two months, I have received the letter from Mr. Martenson

through which I am invited to come to Geneva, in order to prepare my report on "Human Rights and Youth".

I am ready to go to the Centre at 14 February this year!

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26. Telex dated 21 January 1988 from the Centre for Human Rights to the United Nations Information Centre, Bucharest [1]

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27. Cable Dated 21 January 1988 from the President of the United Nations Association of Romania to the Centre for Human Rights

Translated from French

21 January 1988.

I confirm receipt of your telegram 137/128. Mr. Dumitru Mazilu, former Secretary-General of our association, retired on 1 December 1987 and can no longer undertake gainful employment because he is suffering from a heart ailment.

I was obliged to replace him as Secretary-General of our Association.

I regret that my receipt of your message was delayed, owing to my absence on holiday.

Professor Alexandru BALACI.

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28. Letter Dated 11 February 1988 from the Under-Secretary-General for Human Rights to the Acting Director, United Nations Information Centre, Bucharest

11 February 1988.

Confidential

I wish to thank you very much for having forwarded the letters from Professor Mazilu and for assisting us in this matter. May I now ask you to inform Professor Mazilu that we did in fact receive the two letters mailed from Bucharest: one on 25 December 1987 and the other on 29 December 1987 and that we also received the letter which you transmitted to us under cover of your letter of 20 January 1988.

I am looking forward to discussing these matters with you in Geneva during your next visit here (19 to 22 February 1988). I wonder if you could ascertain

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[1] Document not reproduced. *[Note by the Registry.]*

from Professor Mazilu in the meantime if he has encountered any further difficulties in accepting our invitation to visit Geneva and work on his report. If that is the case you might discuss with him what action, if any, the Secretariat could take with a view to facilitating his coming to Geneva. For example, would it be helpful in his view if we were to take the matter up with the Permanent Mission in Geneva or in New York?

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10. Commission on Human Rights: Forty-fourth Session (Geneva, 1 February-11 March 1988)

E/1988/12
E/CN.4/1988/88.

29. Report on the Forty-fourth Session: Chapter XXIV. Election of Members of Sub-Commission on Prevention of Discrimination and Protection of Minorities, Paragraphs 595-599

595. The Commission considered agenda item 24 at its 39th meeting, on 29 February 1988.

596. The Commission had before it a note by the Secretary-General containing nominations of candidates for election to membership of the Sub-Commission on Prevention of Discrimination and Protection of Minorities and biographical data on the candidates (E/CN.4/1988/46 and Add.1-6).

597. In accordance with resolution 1334 (XLIV) and decision 1978/21 of the Economic and Social Council, the geographical distribution of the membership, of the Sub-Commission is as follows: *(a)* seven members from African States; *(b)* five members from Asian States; *(c)* six members from Western European and other States; *(d)* five members from Latin American States; *(e)* three members from Eastern European States.

598. The attention of the Commission was drawn to Economic and Social Council resolution 1986/35 and decision 1987/102, in accordance with which the members of the Sub-Commission would be elected for a term of four years and half of its membership and the corresponding alternates, if any, would be elected every two years. The Council authorized the Chairman of the forty-fourth session of the Commission to draw lots to select the members and, as applicable, their corresponding alternates whose terms of office would expire after two years in accordance with the following pattern: three members from African States; three members from Asian States; three members from Latin American States; one member from Eastern European States; and three members from Western European and other States.

599. The Commission elected by secret ballot the 26 members of the Sub-Commission. The following candidates were elected.

African States

Mr. Yawo Agboyibor[a]	Togo
Mr. Abdou Assouma[b]	
Miss Judith Sefi Attah[a]	Nigeria
Mrs. Christy Ezim Mbonu[b]	

Mr. Aidid Abdillahi Ilkahanaf Mr. Mohamed Isa Turunji[b]	Somalia
Mr. Ahmed Khalifa	Egypt
Mrs. Fatma Zohra Ksentini[a] Mr. Boudjemâa Delmi[b]	Algeria
Mrs. Halima Embarek Warzazi Mr. Mohamed Laghmari[b]	Morocco
Mr. Fisseha Yimer	Ethiopia

Asian States

Mr. Awn Shawkat Al-Khasawneh[a] Mr. Waleed M. Sadi[b]	Jordan
Mrs. Mary Concepción Bautista Ms Haydee Yorac[b]	Philippines
Mr. Murlidhar Chandrakant Bhandare[a]	India
Mr. Ribot Hatano Mr. Yozo Yokota[b]	Japan
Mr. Tian Jin[a] Mr. Shao Jin[b]	China

Eastern European States

Mr. Stanislav Valentinovich Chernichenko[a] Mr. Teimuraz Otarovich Ramishvili[b]	Union of Soviet Socialist Republics
Mr. Ion Diaconu Mr. Ioan Maxim[b]	Romania
Mr. Danilo Türk Ms Lidija R. Basta[b]	Yugoslavia

Latin American States

Mr. Leandro Despouy[a] Mrs. María Teresa Flores[b]	Argentina
Mr. Miguel Alfonso Martínez Mr. Julio Heredia Pérez[b]	Cuba
Mr. Rafael Rivas Posada Mr. Eduardo Suescún Monroy[b]	Colombia
Mr. Alejandro Sobarzo Loaiza[a] Mr. Héctor Fix Zamudio[b]	Mexico
Mr. Luis Varela Quirós[a] Mr. Jorge Rhenán Segura[b]	Costa Rica

Western European and Other States

Mr. Theodoor Cornelis van Boven Mr. Cornelis Flinterman[b]	Netherlands

Mrs. Erica-Irene A. Daes[a]	Greece
Mr. Asbjørn Eide Mr. Jan Helgesen[b]	Norway
Mr. Louis Joinet[a] Mr. Alain Pellet[b]	France
Ms Claire Palley[a]	United Kingdom of Great Britain and Northern Ireland
Mr. William W. Treat Mr. John Carey[b]	United States of America

[a] Elected for a term of two years.
[b] Alternate.

30. Resolution 1988/43, work of the Sub-Commission on Prevention of Discrimination and Protection of Minorities[1]

11. Correspondence and Communications between 5 April and 19 August 1988

31. Letter Dated 5 April 1988 from Mr. Mazilu to the Under-Secretary-General for Human Rights

5 April 1988.

It is my duty to inform you that my authorities have refused again to give me permission to come to the Centre for Human Rights on 15 February 1988.

A Special Commission from the Ministry of Foreign Affairs has asked me on 22 February to transmit a cable to you through which to inform you that I can not prepare my Report on Human Rights and Youth and to suggest to request another expert to prepare it.

I have refused to sign such a paper and I have informed them that I am determined to fulfil my duties as a Special Rapporteur on this subject.

But, unfortunately, a strong pressure on me and on my family continues in order to sign such a paper.

Instead of the permission to come to Geneva on 15 February, since that day extraordinary police measures have been taken against me and against my family. Every day and every night more than 20 policemen are following me, my wife and my son.

Every talk is under police control.

My foreign correspondence and foreign calls have been suspended.

Dear Mr. Under-Secretary-General, please inform the UN Secretary-General about this unusual and intolerable situation, and ask the Romanian Government to put an end immediately to such police measures and to facilitate my activity as UN Special Rapporteur on Human Rights and Youth.

[1] Document not reproduced. *[Note by the Registry.]*

To write such a Report it is not a political crime, but an important international duty of the Special Rapporteur and every Government, including his own, should help him to fulfil it in the best possible way.

In spite of these extraordinary measures against me and against my family, I want to prepare my Report on Human Rights and Youth and to submit it to the next session of the Sub-Commission.

I am ready to come to Geneva for consultations any time. But, I think that it would be necessary to transmit a new invitation. I suggest you to transmit it for 18 April or for 3 May. It will be your choice.

For my part, I will try again to obtain permission by the Romanian authorities.

Since 5 May 1986, step by step, I have lost everything, except for my faith in the noble cause of Human Rights.

I would appreciate hearing from you through Mr. Noel D. Eichhorn, Director of the UN Information Centre in Bucharest at your earliest convenience.

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32. Letter from Mr. Ion Diaconu Dated 29 March 1988 to the Chairman of the Sub-Commission on Prevention of Discrimination and Protection of Minorities Transmitted by a Note Verbale Dated 8 April 1988 from the Permanent Mission of Romania to the United Nations in Geneva

Translated from French

Geneva, 8 April 1988.

No. 190

The Permanent Mission of the Socialist Republic of Romania in Geneva presents its compliments to the secretariat of the Centre for Human Rights in Geneva and has the honour to transmit the letter addressed to Mr. Leandro Despouy, Chairman of the Sub-Commission on Prevention of Discrimination and Protection of Minorities, by Mr. Ion Diaconu, Romanian expert and member of the Sub-Commission.

The Permanent Mission of the Socialist Republic of Romania in Geneva requests the secretariat of the Centre for Human Rights in Geneva to do all it can to ensure that the letter is delivered to the Chairman.

Translated from French

Bucharest, 29 March 1988.

Upon reading the documents of the Commission on Human Rights and the Sub-Commission on Prevention of Discrimination and Protection of Minorities, I have noted with interest that at an earlier session of the Sub-Commission it was decided to prepare a report of the Sub-Commission on the theme "Youth and Human Rights". I have also noted that, as a result of unforeseen circumstances, it has not yet been possible to prepare that report.

In this connection, I wish to inform you that I participated directly in the activities relating to the preparation and observance by the United Nations of

the International Youth Year. In so doing, I became aware that many countries throughout the world were interested in activities concerning all the various aspects of problems relating to youth. For that reason, I believe that a report of our Sub-Commission on youth-related issues would still be useful.

If the Sub-Commission, of which I have the honour of having been elected a member, is still interested in such a report, I could undertake, with the support of my colleagues in the Sub-Commission and, of course, of the United Nations Centre for Human Rights, to prepare a preliminary report, which would be submitted to the Sub-Commission in accordance with that body's practice.

I am taking the liberty of bringing the foregoing to your attention so that you may take this possibility also into account.

I look forward to making your acquaintance.

(Signed) Ion DIACONU.

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33. Letter Dated 19 April 1988 from Mr. Mazilu to the Chairman and Members of the Sub-Commission on Prevention of Discrimination and Protection of Minorities

19 April 1988.

Now I have the first version of the main ideas of my Report on Human Rights and Youth and I hope that it would be possible to find out a way to send it to you.

Many years I have been hopeful regarding the position of a Government concerning a concrete subject in the field of Human Rights.

It was a bitter surprise for me to find out that my own Government has been strongly against my Report on Human Rights and Youth, and to see that it did everything possible to discourage me to prepare it.

Since 5 May 1986, when I have asked for the first time the approval by the Romanian authorities to come to the Centre for Human Rights in Geneva, so political leaders have tried to convince me to abandon this study, because "the leadership of the country wouldn't like to hear something about Human Rights".

In spite of the strong pressure on me to abandon the study, I have insisted to prepare and to submit to the Sub-Commission on Prevention of Discrimination and Protection of Minorities my Report.

Why?

First, because a study on Human Rights and youth is absolutely necessary, taking into account the frequent violations of the rights and freedoms of young people in different countries, including my own.

Second, because we have to draw the attention of the international public opinion on this important subject.

Third, because the United Nations has the right to analyse this problem and every Government, including my own, had the duty to help the Special Rapporteur to prepare and to submit a report on the subject, and not to prevent him to do his job.

In my opinion this is a question of principle.

Why to be indifferent when we see that someone, who happens to be a political leader, would like to act at one's will in such an important matter?

Since that moment, when I have expressed my opinion on the necessity of the analysis of this subject, for me the life became almost impossible. For the most

important political leaders was a very unpleasant surprise to hear that there is a person, who has the boldness to have his own thought, which is contrary to their thought.

An arsenal of repressive measures, including police measures have been taken against me, against my wife and my son.

My candidature to the election in the International Law Commission has been withdrawn; my passport has been suspended; my foreign correspondence and foreign calls have been interrupted; every move, every talk have been put under police control.

Because of this unusual and impossible situation, I have suffered very much. In 1987, for two times, I was in hospital and since 1 December 1987 I have been forced to retire from my activity as Minister-Counsellor and Head of Legal Department in the Ministry of Foreign Affairs.

Since 15 February 1988, more than 20 policemen are following me, my wife and my son day and night.

For my differences of opinion and conviction regarding to this study and the person who has to write it, I have lost everything, except for my faith in the noble cause of Human Rights.

I can not accept that in our civilized world to continue to be the political leaders ready to repress in such violent manner someone, because of his differences of opinion and conviction on an international initiative of the United Nations, the Organization for which they have declared publicly repeatedly "full support".

I am sure that the United Nations has to continue to fight for the noble cause of Human Rights in our complex and contradictory world.

All human beings are born free and equal in dignity and rights.

Everyone has the right to freedom of thought, to freedom of opinion and expression, to freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

The violation of these fundamental rights and freedoms has the grave consequences on the education of the young people everywhere in the world.

The United Nations, the Member States, all Governments have to take the necessary measures to put an immediate end to any violation of Human Rights and to build a society in dignity and liberty.

If in that moment, when you will read my first draft of the Report on Human Rights and Youth, I will be no longer free man, the possibility on which many friends now speak me out, please remember that I swear you to serve the noble cause of Human Rights until the last day of my life.

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34. Letter Dated 19 April 1988 from Mr. Mazilu to the Under-Secretary-General for Human Rights

19 April 1988.

First of all, I would like to address my sincere thanks and my profound gratitude for your constant help in my efforts to continue to serve the noble cause of Human Rights in the world.

Now I have the first version of the main ideas of my Report on Human Rights and Youth and I hope to find out a way to send it to you.

Please excuse me that I am sending to you a text which is partial in Romanian. But, be so kind and understand me. In my unusual situation it was too risky for me to ask someone to help me to translate it into a perfect English.

Secondly, it was very important for me to make sure that the original version, with all political nuances, will be in your hands in time.

If in the meantime, in spite of our efforts, my authorities would continue to refuse me the approval to come to Geneva, you will be free to use this text in the best way possible to serve the noble cause of Human Rights.

In this version of my report, I am referring to a limited number of countries. But, to finish it, I desperately need consultations at your Centre for Human Rights.

I would appreciate hearing from you at your earliest convenience concerning your plans with regard to these consultations.

P.S. Please ask Miss Yvonne Dialo, the excellent Secretary of the Sub-Commission, to transmit the attached letter to Mr. Despouy, Mrs. Erika-Irene Daes, Mr. Witaker, Mr. John Carey and Mr. Joinet.

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35. Letter Dated 6 May 1988 from the Under-Secretary-General for Human Rights to the Permanent Representative of Romania to the United Nations Office at Geneva

6 May 1988.

I am writing to you with regard to the report on "Human rights and youth" under preparation by Professor Dumitru Mazilu for the coming session of the Sub-Commission on Prevention of Discrimination and Protection of Minorities, scheduled for 8 August to 2 September 1988 in Geneva. As I have had the occasion to inform you in the past, the report is indeed of importance to the Sub-Commission and I wish to do everything possible to ensure that Professor Mazilu is able to prepare it in accordance with established practice.

Ambassador Leandro Despouy, during his visit to Geneva last week, informed me of his deep concern regarding the preparation of this report and of his fear that a failure to prepare and present the report to the next session of the Sub-Commission might well occasion consequences which he wished to avoid if at all possible. Ambassador Despouy has informed me that as Chairman of the Sub-Commission, and with a desire to facilitate the preparation of the report, he informed you of his wish to consult with Professor Mazilu during the first week of June 1988 when Ambassador Despouy will next be in Geneva. Ambassador Despouy has asked me to convey his wish to Professor Mazilu and request him to come to Geneva during the period 30 May to 10 June 1988 for consultations and preparation of his report. Professor Mazilu has indicated his readiness and willingness to come to Geneva for that period, while respecting the appropriate procedures. We have taken steps through the United Nations Information Centre in Bucharest to provide him with the necessary plane ticket.

In our contacts with Professor Mazilu he has indicated that over the past two years he has not received the voluminous information sent to him for his report; he has thus not been able to take into account in the work he has already done the information submitted by Governments, specialized agencies and non-

governmental organizations. Please find enclosed a list of the dates on which information was sent to him at the following address:

United Nations Association of Romania
Sasea Kiseleff No. 47
Sectorul I
Bucharest

We would appreciate your assistance in seeing that Professor Mazilu receives that information.

As you know, Mr. Ambassador, one of the important factors in the successful and harmonious operation of human rights bodies is to avoid as much as possible that contentious and extraneous matters enter into the debate. I am sure that I can count on the understanding and assistance of your authorities in this regard.

I am at your disposal for any further information you may wish in this matter.

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36. Letter Dated 6 May 1988 from the Under-Secretary-General for Human Rights to Mr. Mazilu

6 May 1988.

Confidential

I am writing to you concerning the preparation of your report on human rights and youth for the next session of the Sub-Commission on Prevention of Discrimination and Protection of Minorities, which will take place in Geneva from 8 August to 2 September of this year.

As you know, I have for quite some time been continuously in contact with the authorities of your country in order to facilitate your trip to Geneva for the purpose of consultations and the finalization of your report and I have kept the Chairman of the Sub-Commission, Ambassador Leandro Despouy, informed at his request.

Last week, on Thursday, 28 April, I met with the Chairman and he informed me of his concern regarding the preparation of your report. That same day he met with the Permanent Representative of Romania to the United Nations Office at Geneva, Ambassador Gheorghe Dolgu, in order to express his wish to be able to meet with you in Geneva during his next visit, the first week of June, in order to consult with you regarding your report. Ambassador Despouy informs me that he requested Ambassador Dolgu to take all steps necessary to enable you to come for those consultations. I would suggest you plan to be in Geneva for the period 30 May to 10 June 1988.

Mr. Noël Eichhorn, Acting Director of UNIC in Bucharest, will be at your disposal to facilitate your travel. The staff of the Centre is now compiling copies of the information sent to you previously and which you indicate you have not received.

Looking forward to seeing you in June,

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37. Letter Dated 8 May 1988 from Mr. Mazilu to the Under-Secretary-General for Human Rights

8 May 1988.

It is a pleasure for me to inform you that in spite of my unusual situation and the extraordinary repression against me and against my family (my access to the United Nations Information Centre in Bucharest was blocked by police; my telephone has been disconnected after my talk with your Centre on 4 May), I have finished a new chapter of my report and I will try to find out a way to send it to you.

Please excuse me, but for the same reasons, the text is also in Romanian.

As I have informed Mr. McCarthy, I am ready to come to Geneva in last part of this month or any other time. It will be your choice.

The only problem is the approval by my authorities.

I would appreciate hearing from you at your earliest convenience concerning this problem.

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38. Letter Dated 8 May 1988 from Mr. Mazilu to the Chairman of the Sub-Commission on Prevention of Discrimination and Protection of Minorities

8 May 1988.

I would like to address to you my sincere and profound gratitude for your help! You know better than any other member of the Sub-Commission what means repression, police measures . . .

Like you a few years ago, since 5 May 1986 I am living a terrible and incredible experience. My Government has refused me constantly the approval to come to Geneva, in order to prepare my Report on Human Rights and Youth. Since 15 February 1988 more than twenty policemen are following me, my wife and my son day and night; my access to the UN Information Centre in Bucharest was blocked by police; my telephone has been disconnected after my talk with the Centre for Human Rights on 4 May; my foreign correspondence was confiscated . . .

In spite of these extraordinary police measures, I am determined to prepare my Report on Human Rights and Youth and to submit to the next session of the Sub-Commission.

I hope that you and Mr. Martenson, with your ability and very known experience, will succeed in your efforts to convince my Government that to write a report on human rights is not a political crime. To prepare such a report it is my duty as a Special Rapporteur, and every Government, including my own, has an obligation to facilitate my work on the subject, but not to prevent it.

I hope to see you in Geneva in the last part of this month . . .

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39. Letter Dated 17 May 1988 from Mr. Mazilu to the Under-Secretary-General for Human Rights

17 May 1988.

You may know that for me it is almost impossible to find out a way to send you my new chapter of my report.

But, in spite of these incredible difficulties, I will continue to try to find out such a way.

In addition to my letter from 8 May 1988, I would like to ask you to be so kind and to inform Mr. L. Joinet concerning my unusual and intolerable situation.

It would be your choice to inform every other friend, member of our Sub-Commission regarding this extraordinary repression against me and against my family.

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40. Letter Dated 19 May 1988 from the Centre for Human Rights to Mr. Mazilu Transmitted through the Acting Director, United Nations Information Centre, Bucharest

19 May 1988.

It would be appreciated if you would confirm receipt of the letter and documents for Professor Mazilu and their transmission to him. I attach a copy of the letter for your information. Thank you.

T. McCARTHY.

19 May 1988.

Attached to the present letter please find photocopies of the information relating to your report on human rights and youth which we have sent to you over the last two years. You will find a list of the documents and a list of the dates on which they were sent. In addition, we enclose certain documents which have just arrived and which we did not forward to you before.

You may wish to bring these documents with you to Geneva in order to avoid the necessity of photocopying them here again.

Looking forward to seeing you soon.

(Signed) Tom McCARTHY.

SUBJECT: HUMAN RIGHTS AND YOUTH

Preliminary List of Documents Sent to the Special Rapporteur, Mr. Dumitru Mazilu

Date	*Contents*
23 January 1987	Relevant information received from non-governmental organizations.
12 March 1987	Relevant information received from United Nations programmes and non-governmental organizations.
20 March 1987	A report by a specialized agency, and a book by Professor George Vaideanu.
24 March 1987	Relevant information received from States Members of the United Nations, United Nations organs, and a specialized agency, as well as from the United Nations.

7 April 1987	Relevant information received from United Nations organs, from a State Member of the United Nations, and from non-governmental organizations.
14 April 1987	Relevant information received from the United Nations, from a State Member of the United Nations and from the press.
21 April 1987	Relevant information received from the United Nations and non-governmental organizations.
24 April 1987	Relevant information received from a State Member of the United Nations, and non-governmental organizations.
7 May 1987	Relevant information received from States Members of the United Nations.
15 May 1987	Relevant information received from States Members of the United Nations, a specialized agency and non-governmental organizations.
26 June 1987	Relevant information received from States Members of the United Nations, and non-governmental organizations.

41. Letter Dated 15 June 1988 from the Under-Secretary-General for Human Rights to the Permanent Representative of Romania to the United Nations Office at Geneva

15 June 1988.

I am writing to you with regard to the preparation by Professor Dumitru Mazilu of the report on human rights and youth for the next session of the Sub-Commission on Prevention of Discrimination and Protection of Minorities, which will meet in Geneva from 8 August to 2 September 1988. As you know, Professor Mazilu was appointed by the Sub-Commission to carry out this task in order to respond to a request from the Commission on Human Rights regarding the issue of human rights and youth.

On a number of occasions in the past I have been able to inform you of the importance attached to this report by the Sub-Commission and of my own desire to do everything possible to ensure that Professor Mazilu is able to prepare the report in accordance with established practice. We have contacted Professor Mazilu on several occasions and invited him to come to Geneva for this purpose and authorization has been issued for his travel through the United Nations Information Centre in Bucharest. Professor Mazilu has informed us of his readiness and willingness to do so, while respecting the appropriate procedures applicable in such cases.

As I was able to inform you in my letter of 6 May 1988, the Chairman of the Sub-Commission, Ambassador Leandro Despouy, brought to my attention his deep concern regarding the preparation of this report. For this reason, and during his meeting with you on 29 April 1988, he asked to be able to meet with Professor Mazilu during the week of 30 May to 10 June 1988 for consultations and preparation of his report. On his behalf I confirmed that request in my let-

ter of 6 May 1988, together with the agreement of Professor Mazilu to come to Geneva during that period.

At the end of his most recent visit to Geneva, Ambassador Despouy told me of his meeting with you on 26 May 1988 and of his great regret at being informed that Professor Mazilu would not be able to come to meet with him in Geneva as he had requested. For my part, I had hoped that we were moving in the direction of a positive solution in this matter and I can only express my disappointment that Professor Mazilu has not yet been enabled to fulfil his mandate.

In light of the importance of the report for the Sub-Commission and the little time left for its preparation I have decided, as an exceptional measure, to authorize a staff member of the Centre for Human Rights to travel to Bucharest for the purpose of working with Professor Mazilu on the draft of his report. I would be able to do so, however, only on the understanding that Professor Mazilu would be enabled to travel to Geneva during the session of the Sub-Commission for the purpose of presenting his report and participating in the debate in accordance with established practice.

Given the importance and urgency of the mission, I would appreciate receiving the agreement of your authorities to this procedure as soon as possible so that the necessary practical steps may be taken.

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42. Letter Dated 27 June 1988 from the Permanent Representative of Romania to the United Nations Office at Geneva to the Under-Secretary-General for Human Rights

Translated from French

27 June 1988.

No. 375

I acknowledge receipt of your letter of 15 June 1988 and assure you that I shall transmit the contents to Bucharest forthwith.

I take this opportunity to recall that in the course of our meetings in recent months I explained to you the way in which the competent authorities of my country view the situation.

I have informed Ambassador Leandro Despouy, Chairman of the Sub-Commission on Prevention of Discrimination and Protection of Minorities, accordingly.

I would also recall that Mr. Ion Diaconu, an elected member of the Sub-Commission, offered on 8 April 1988 to prepare the report on "Youth and human rights".

I am sure that, in view of the well-known competence of this Romanian expert, the Centre for Human Rights and the Bureau of the Sub-Commission on Prevention of Discrimination and Protection of Minorities will accept this proposal.

(Signed) Gheorghe DOLGU.

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43. Telex Received 24 July 1988 from Mr. Diaconu to the Chairman of the Sub-Commission on Prevention of Discrimination and Protection of Minorities

Translated from French

[Received 24 July 1988.]

I would request you to transmit the following text to Mr. Leandro Despouy, Chairman of the Sub-Commission on Prevention of Discrimination and Protection of Minorities:

"Sir,

At its next session, our Sub-Commission is scheduled to consider a report on the theme 'Youth and human rights'. It appears that as a result of unforeseen circumstances it has not thus far been possible to prepare this report.

If the Sub-Commission, of which I have the honour of having been elected a member, is still interested in such a report, I could undertake to prepare a report on the subject, which would be submitted to the Sub-Commission in accordance with that body's practice. At the same time, I am in a position to inform you that, desiring to provide the Sub-Commission with food for thought on this subject at the same session, and thus enable it to make progress with its work, I could submit immediately in writing the results of my research on the theme 'Youth and human rights'. I have already requested my country's Permanent Mission in Geneva to send you this document, so that you can take the necessary steps to have it circulated to the members of the Sub-Commission.

I look forward to making your acquaintance.

Ion DIACONU."

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44. Letter Dated 1 July 1988 from the Under-Secretary-General for Human Rights to the Permanent Representative of Romania to the United Nations Office at Geneva

1 July 1988.

I wish to thank you for your letter of 27 June in which you informed me that you had trasmitted to your authorities my letter of 15 June dealing with the preparation of the report on human rights and youth by Professor Mazilu.

You have, in the past, expressed your Government's concern regarding the health of Professor Mazilu and his inability for that reason to prepare his report in Geneva. With that in mind and in order to lighten the burden for Professor Mazilu which a long period of work in Geneva might entail, I informed you in my letter of 15 June of my decision to authorize a staff member to travel to Bucharest to assist Professor Mazilu in the preparation of his report. This would entail only a short visit to Geneva by him for the presentation of his report to the Sub-Commission and its discussion of it.

In your letter of 27 June you reminded me of the suggestion you had made that the newly elected member to the Sub-Commission from your country, Mr.

Ion Diaconu, prepare the report on human rights and youth. I have, of course, discussed this matter with the Chairman of the Sub-Commission. As I have had occasion to state in the past, Professor Mazilu's mandate comes from a decision by the Sub-Commission in its resolution 1985/12 and it would be within the competence only of the Sub-Commission, or a higher policy-making body, to change that designation.

The Secretary-General must act pursuant to the instructions given by the Sub-Commission in its resolution 1985/12 "to provide all necessary assistance to Mr. Dumitru Mazilu for the completion of this task".

You will understand, Mr. Ambassador, my responsibility and deep desire to facilitate to the maximum extent possible and in accordance with established practice, the preparation of the report by Professor Mazilu for submission to the coming session of the Sub-Commission.

45. Cable Dated 9 August 1988 from the Under-Secretary-General for Human Rights to Mr. Mazilu

9 August 1988.

I have the honour to contact you on behalf of the Sub-Commission on Prevention of Discrimination and Protection of Minorities concerning your report on human rights and youth scheduled for discussion at the Sub-Commission's present session.

Today, 9 August 1988, the Sub-Commission at its second plenary meeting decided to invite you to come to Geneva to present your report personally to the Sub-Commission in accordance with established practice. The Sub-Commission has not yet decided on when it will take up the item relating to your report. You will be informed when such a decision has been taken. However, the Sub-Commission did request that you be invited to present your report and that we ascertain your willingness and availability to come.

The United Nations will provide you with the travel entitlements and living expenses provided under existing rules. The United Nations Information Centre in Bucharest has been instructed to provide you with a ticket for travel to Geneva.

The Sub-Commission is anxious to be informed in the briefest delay possible of your response to this invitation and intends to discuss this matter Friday morning, 12 August 1988. For this purpose please contact me at the United Nations Office at Geneva via cable.

46. Telex Dated 10 August 1988 from the Officer-in Charge, United Nations Information Centre, Bucharest, to the Under-Secretary-General for Human Rights

10 August 1988.

Re your telex dated 9 August 1988 concerning personal delivery to Professor Dumitru Mazilu of the text conveyed by you, I inform you that his mother-in-law told us by phone that Mr. Mazilu, being sick, has left Bucharest together with his family a few days ago, for a month, to undergo medical treatment for heart disease, in a health resort not known by her.

Alexander PROKHOROV.

47. Telex dated 10 August 1988 from PTT Bucharest to the Centre for Human Rights (translated from French) [1]

48. Telex Dated 11 August 1988 from the Under-Secretary-General for Human Rights to the Officer-in-Charge, United Nations Information Centre, Bucharest

11 August 1988.

Reference my telex dated 9 August concerning Professor Mazilu and your response Misc 337 of 10 August, wish to thank you for your assistance in this matter.

Chairman Sub-Commission informed members of the contents your cable 10 August and, following a short debate, Sub-Commission decided, through its chairman, to request your assistance in identifying as soon as possible the "health resort not known by her" as mentioned in your cable. Would much appreciate your contacting Professor Mazilu's mother-in-law and any other appropriate sources to determine location and telephone number of this health resort.

Sub-Commission will return to this matter tomorrow, Friday 12 August, at 10.00 a.m. and would therefore wish to receive as soon as possible any available information.

49. Cable Dated 11 August 1988 from the Under-Secretary-General for Human Rights to Mr. Mazilu

11 August 1988.

I would like to inform you that the Sub-Commission has approved its timetable on 10 August 1988 and that your item is scheduled for Tuesday, 30 August 1988. The Sub-Commission would be very grateful if you could present your report on this date.

50. Telex dated 15 August 1988 from PTT Bucharest to the Centre for Human Rights [1]

51. Telex dated 15 August 1988 from the United Nations Information Centre, Bucharest, to the Centre for Human Rights [1]

[1] Document not reproduced. *[Note by the Registry.]*

52. Letter Dated 11 August 1988 from Mr. Mazilu to the Chairman of the Sub-Commission on Prevention of Discrimination and Protection of Minorities

11 August 1988.

I would like to inform you that I am ready to come to the present session of the Sub-Commission *any time*.

I have no *personal* problems which can prevent me to come to Geneva in order to finalize and to submit my Report to the Sub-Commission.

There is only one *official* problem: I need the approval of my authorities, which since 5 May 86 persistently have refused me permission to come to Geneva . . .

Dear Mr. Chairman, Dear Colleagues and Friends,

Please inform the Romanian authorities and their special expert to the Sub-Commission that to prepare and to submit a report on Human Rights and Youth is an important international task, but in no case a political crime.

In conformity with the provisions of the UN Charter, the pertinent resolutions of the General Assembly, of the Economic and Social Council and the Commission on Human Rights and its Sub-Commission, every Member State has the duty to facilitate the work of a United Nations Special Rapporteur and not to prevent it.

Consequently, please ask the Romanian authorities to put an immediate end to the repressive measures and police terror against me and against my family . . .

I am determined to do everything possible to fulfil to the best of my ability my task as a UN Special Rapporteur on Human Rights and Youth.

It is my firm conviction that this will serve to the noble cause of Human Rights in our complex and contradictory world.

So help me God!

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53. Letter Dated 19 August 1988 from Mr. Mazilu to the Under-Secretary-General for Human Rights

19 August 1988.

I would like to inform you that I am ready to come any time to Geneva to submit my Report.

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12. Sub-Commission on Prevention of Discrimination and Protection of Minorities: Fortieth Session (Geneva, 8 August-2 September 1988)

E/CN.4/1989/3
E/CN.4/Sub.2/1988/45.

54. Report on the Fortieth Session: Decision 1988/102. Organization of Work: Report by Dumitru Mazilu, Adopted on 15 August 1988

At its 10th meeting, on 15 August 1988, the Sub-Commission decided by a roll-call vote of 15 to 2, with 4 abstentions to request the Secretary-General to

establish contact with the Government of Romania and to bring to the Government's attention the Sub-Commission's urgent need to establish personal contact with its Special Rapporteur Mr. Dumitru Mazilu and to convey the request that the Government assist in locating Mr. Mazilu and facilitate a visit to him by a member of the Sub-Commission and the Secretariat to help him in the completion of his study on human rights and youth if he so wished. The Sub-Commission invited the Secretary-General to inform it on developments in this matter on Wednesday, 17 August 1988.

[See Chap. III]

E/CN.4/1989/3
E/CN.4/Sub.2/1988/45.

55. Report on the Fortieth Session: Resolution 1988/37. Prevention of Discrimination and Protection of Children: Human Rights and Youth, Adopted on 1 September 1988

The Sub-Commission on Prevention of Discrimination and Protection of Minorities,

Recalling its appointment in 1985 of Dumitru Mazilu, expert from Romania, to prepare a report on human rights and youth, and that his membership in the Sub-Commission expired before the completion of the study entrusted to him as Special Rapporteur of the Sub-Commission,

Considering that Mr. Mazilu in his continuing capacity of Special Rapporteur enjoys the privileges and immunities, necessary for the performance of his duties, as provided for in Section 22 of the Convention on the Privileges and Immunities of the United Nations of 13 February 1946, to which Romania is a party,

Stressing the urgent need to have the said report presented to it by Mr. Mazilu as soon as possible,

Taking into account that, if Mr. Mazilu should be unable for whatever personal reasons to complete and present himself the said report to the Sub-Commission, he should be given any possible assistance by the United Nations enabling him to complete his report, with such assistance, in Romania,

Recalling that on 15 August 1988 it adopted to that end — by a vote of 15 in favour, 2 against, 4 abstentions and 3 not participating — the following decision:

> "The Sub-Commission on Prevention of Discrimination and Protection of Minorities requests the Secretary-General to establish contact with the Government of Romania and to bring to the Government's attention the Sub-Commission's urgent need to establish personal contact with its Special Rapporteur, Mr. Dumitru Mazilu, and to convey the request that the Government assist in locating Mr. Mazilu and facilitate a visit to him by a member of the Sub-Commission and the Secretariat to help him in the completion of his study on Human Rights and Youth, if he so wishes. The Sub-Commission invites the Secretary-General to inform it on developments in this matter on Wednesday, 17 August 1988."

Having been informed, however, on 17 August 1988 by the Under-Secretary-General for Human Rights of a communication which the Government of Romania had addressed to the United Nations Secretary-General stating that the Secretariat had no juridical basis to intervene in a matter between a citizen and his Government and that the Romanian Government rejected the request to allow a visit to Mr. Mazilu,

1. *Requests* the Secretary-General to approach once more the Government of Romania and invoke the applicability of the Convention on the Privileges and Immunities of the United Nations, and request the Government to co-operate fully in the implementation of the present resolution by ensuring that Mr. Mazilu's report be completed and presented to the Sub-Commission at the earliest possible date, either by himself or in the manner indicated above;

2. *Further requests* the Secretary-General, in the event the Government of Romania does not concur in the applicability of the provisions of the said Convention in the present case, and thus with the terms of the present resolution, to bring the difference between the United Nations and Romania immediately to the attention of the Commission on Human Rights at its forthcoming forty-fifth session in 1989;

3. *Requests* the Commission on Human Rights, in the latter event, to urge the Economic and Social Council to request, in accordance with General Assembly resolution 89 (I) of 11 December 1946, from the International Court of Justice an advisory opinion on the applicability of the relevant provisions of the Convention on the Privileges and Immunities of the United Nations to the present case and within the scope of the present resolution.

36th meeting
1 September 1988

[Adopted by a roll-call vote of 16 to 4, with 3 abstentions. See Chap. XVI]

E/CN.4/1989/3
E/CN.4/Sub.2/1988/45.

56. Report on the Fortieth Session, Paragraphs 11-25 and 416-420

Question of the Report Entrusted to Mr. D. Mazilu

11. Within the framework of the Organization of Work, the Sub-Commission considered the question of the report on human rights and youth entrusted to Mr. Dumitru Mazilu by its resolution 1985/12 and scheduled for consideration under agenda item 15 *(c)*, at its 2nd, 5th, 7th, 9th, 10th, 11th, 14th, 23rd, 25th, 30th, 32nd, and 36th meetings on 9, 11, 12, 15, 16, 17, 24, 25, 29 and 30 August and 1 September 1988.

12. The Sub-Commission heard statements by the Observer for Romania (7th and 11th).

13. At the 7th meeting, on 12 August 1988, a draft decision was submitted by Mr. Eide and Mr. Joinet which read as follows:

"The Sub-Commission decides to authorize its Chairman, in consultation with the Bureau, to nominate within the framework of the organization a member of the Sub-Commission to proceed to Romania, as quickly as possible, in order to visit with the Special Rapporteur, Mr. Mazilu, and to assist him in preparing a progress report of his study if for health reasons he is unable to come to Geneva during the present session.

Furthermore, the Sub-Commission decides to request the Under-Secretary-General for Human Rights to appoint a staff member of the Centre for Human Rights to accompany and assist the Sub-Commission member nominated for this task."

14. At the 9th meeting, on 15 August 1988, Mr. Eide and Mr. Joinet submitted a revised draft decision.

15. At the 10th meeting, on 15 August 1988, Mr. Diaconu moved, under rule 65, paragraph 2, of the rules of procedure of the functional commissions of the Economic and Social Council, that no decision be taken on the revised draft decision submitted by Mr. Eide and Mr. Joinet.

16. The motion made by Mr. Diaconu was rejected by 14 votes to 4, with 5 abstentions.

17. Mr. Alfonso Martínez requested a roll-call vote on the revised draft decision submitted by Mr. Eide and Mr. Joinet.

18. The revised draft decision was adopted by 15 votes to 2, with 4 abstentions. The voting was as follows:

In favour: Mr. Al-Khasawnen, Mr. Assouma, Mrs. Bautista, Mr. Carey, Mrs. Daes, Mr. Eide, Mr. Flinterman, Mr. Hatano, Mr. Ilkahanaf, Mr. Joinet, Ms Palley, Mr. Sobarzo, Mr. Türk, Mr. Varela and Mrs. Warzazi.

Against: Mr. Chernichenko and Mr. Diaconu.

Abstaining: Miss Attah, Mr. Tian Jin, Mr. Rivas, Mr. Yimer.

19. For the text as adopted, see Chapter II, Section B, decision 1988/102.

20. At the 14th meeting on 17 August 1988, the Under-Secretary-General made a statement transmitting the reply to Sub-Commission decision 1988/102 of 15 August 1988, received by the Secretary-General from the Permanent Mission of Romania to the United Nations Headquarters.

21. At the same meeting, the Sub-Commission requested the Secretary-General to request from the Romanian authorities information as to where Mr. Mazilu was and how the Sub-Commission might contact him.

22. At the 23rd meeting, on 24 August 1988, the Sub-Commission heard a statement made by the Senior Legal Officer of the United Nations Office at Geneva in regard to the question of the applicability of the Convention on the Privileges and Immunities of the United Nations to the situation of Mr. Mazilu.

23. At the 25th meeting, on 25 August 1988, the Chairman made a statement in regard to communications received from Mr. Mazilu.

24. At the 36th meeting, on 1 September 1988, the Sub-Commission took up for consideration draft resolution E/CN.4/Sub.2/1988/L.25/Rev.1 under items 2 and 15 *(c)*.

25. For the consideration of the matter and the resolution adopted, see Chapter XVI and Chapter II, Section A, resolution 1988/37.

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Prevention of Discrimination and Protection of Children: Human Rights and Youth

416. At the same meeting, Mr. Eide introduced draft resolution E/CN.4/Sub.2/1988/L.25/Rev.1, sponsored by Mr. van Boven, Mrs. Daes, Mr. Eide, Mr. Ilkahanaf, Mr. Joinet, Ms Palley, Mr. Treat and Mr. Yokota. Mr. Varela subsequently joined the sponsors.

417. Statements relating to the draft resolution were made by Mr. Alfonso Martínez, Mr. Diaconu and Mr. Joinet.

418. At the request of Mr. Eide, a roll-call vote was taken. The draft resolution was adopted by 16 votes to 4, with 3 abstentions. The voting was as follows:

In favour: Mr. Assouma, Mr. Al-Khasawneh, Mr. van Boven, Mrs. Bautista, Mrs. Daes, Mr. Eide, Mrs. Flores, Mr. Hatano, Mr. Ilkahanaf, Mr. Joinet, Ms Palley, Mr. Rivas, Mr. Sobarzo, Mr. Treat, Mr. Türk, Mr. Varela.

Against: Mr. Alfonso Martínez, Mr. Chernichenko, Mr. Diaconu, Mr. Tian Jin.

Abstaining: Mr. Laghmari, Mrs. Mbonu, Mr. Yimer.

419. Statements in explanation of vote after the vote were made by Mr. Al-Khasawneh, Mrs. Ksentini and Mr. Türk.

420. For the text of the resolution, see Chapter II, Section A, resolution 1988/37.

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57. Summary Record of the 1st meeting (held at the Palais des Nations, Geneva, on Monday, 8 August 1988, at 10.30 a.m.)[1] E/CN.4/Sub.2/1988/SR.1

E/CN.4/Sub.2/1988/SR.2
21 October 1988.

58. Summary Record of the 2nd Meeting

Held at the Palais des Nations, Geneva,
on Tuesday, 9 August 1988, at 10 a.m.

Chairman: Mr. Bhandare

[Paras. 1-15 not reproduced]

The meeting was called to order at 10.15 a.m.

ORGANIZATION OF WORK

16. *Mr. Varela Quiros* said that he did not understand why it had been arranged for agenda item 15 to be considered only at the end of the session.

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[1] Document not reproduced. *[Note by the Registry.]*

Among the matters which came under that item, the Sub-Commission ought to have before it the report which Mr. Mazilu had been requested to prepare on human rights and youth and which was not available. He would therefore like to know whether the Sub-Commission, when taking up item 15 *(c)*, would consider the question of respect for human rights in the case of its own members.

[Paras. 17-26 not reproduced]

27. *[The Chairman]* The Sub-Commission must be in a position to know whether Mr. Mazilu, its Special Rapporteur on Human Rights and Youth, would be available. The situation in that respect had already been explained by the outgoing Chairman at the first meeting of the fortieth session. He considered that the Sub-Commission should send a telegram to Mr. Mazilu and wait, for two or three days perhaps, for a reply.

28. *Mr. Joinet* said that the telegram must be sent immediately. If there was no reply, consideration could be given to the possibility of sending a member of the Sub-Commission to Mr. Mazilu in Romania. He himself was willing to undertake such a journey. He pointed out that the discussion on the situation which had already been held at the previous session was reflected in summary record E/CN.4/Sub.2/1987/SR.5 and also that Mr. Mazilu had sent, to several members of the Sub-Commission, including himself, a letter dated 19 April 1988 which he could read out to the Sub-Commission.

29. *Mr. Diaconu* objected that the Sub-Commission was departing from its consideration of the organization of its work.

30. *Mr. Despouy* said that he, too, had received the letter which Mr. Joinet had just mentioned. In fact, the letter had been addressed to him as Chairman of the Sub-Commission at its previous session, with a request that he should communicate its contents to certain members. Among those members Mr. Joinet was still a member of the Sub-Commission at the present session; that was why he had just mentioned the letter.

31. *Mr. Alfonso Martínez* said that, although he was not opposed to Mr. Mazilu's letter being read out, he wondered whether reading it out would help the Sub-Commission to attain its objective, which was to ensure that the report on human rights and youth could be submitted.

32. *Mrs. Warzazi* said that it would be better to await the reply to the telegram which it had just been proposed to send. If within two days there was no reply, members of the Sub-Commission should discuss Mr. Mazilu's situation, but preferably in private.

33. *Mr. Eide* stressed that the Sub-Commission must know exactly why Mr. Mazilu was prevented from coming to submit his report, and it must know soon whether it would have that report or not. The situation should not necessarily be discussed in private; on the contrary, a public discussion, in the presence of the various participants in the session, was preferable.

34. *Miss Attah* said that the best course would be for the Sub-Commission to decide promptly to send a telegram: it should then wait for a reply — for example, until Friday, 12 August. In the meantime, the text of the letter mentioned by Mr. Joinet could be communicated to those members of the Sub-Commission who were not acquainted with it.

35. *Mr. van Boven*, while recognizing the weight of Mr. Eide's argument, proposed that for the moment the approach recommended by Miss Attah should be followed.

36. *Mrs. Daes* added that it would be necessary to request the observer for Romania, who was present at the session, to contact his Government so that an explanation could be obtained from that quarter.

37. *Mr. Joinet* explained that he had merely wished to speed up the measures which the Sub-Commission had to take in order to clarify the situation regarding the study on human rights and youth.

38. After a discussion on the foregoing proposals in which *Mr. Carey, Mr. Sadi, Mr. Chernichenko, Mr. Tian Jin,* and *Mr. Alfonso Martínez* took part, the *Chairman* proposed that the Sub-Commission should immediately send a telegram to Mr. Mazilu to ask him whether he would be able to come to submit his study on human rights and youth and that the Sub-Commission should wait until the end of the week, until 12 August, for a reply to the telegram. In the meantime, the letter mentioned by Mr. Joinet would be brought to the knowledge of all members. Subsequently, if necessary, the Sub-Commission could consider sending one of its members to Mr. Mazilu, as had been suggested.

39. *It was so decided.*

The meeting rose at 12.15 p.m.

E/CN.4/Sub.2/1988/SR.5
15 November 1988.

59. Summary Record of the 5th Meeting

Held at the Palais des Nations, Geneva,
on Thursday, 11 August 1988, at 10 a.m.

Chairman: Mr. Bhandare

The meeting was called to order at 10.15 a.m.

ORGANIZATION OF WORK

1. *The Chairman* recalled that the Sub-Commission had taken the decision to invite the Special Rapporteurs to be present during the discussion of their reports. Pursuant to that decision, the Secretariat had sent the required telegram to Mr. Mazilu. In addition, because the Sub-Commission had wished for a rapid response, a copy of the telegram had been transmitted to the United Nations Information Centre at Bucharest, with the request that it, too, transmit the text of the telegram to Mr. Mazilu. The following reply had been received by Mr. Martenson, Under-Secretary-General for Human Rights, from the officer-in-charge of the United Nations Information Centre at Bucharest:

> "In reply to your telex dated 9 August 1988 concerning personal delivery to Mr. Dumitru Mazilu of the text conveyed by you, I inform you that his mother-in-law told us by telephone that Mr. Mazilu, being sick, left Bucharest together with his family a few days ago, for a month, to undergo medical treatment for heart disease, in a health resort not known to her."

2. The text of the above statement, including the text of the telegram received from Bucharest, would be distributed to the members of the Sub-Commission

so that they could study it prior to discussing the matter, as agreed, at the meeting on Friday morning.

3. *Ms Palley*, speaking on a point of order, said that there was no need to wait until the following day to discuss the matter, since the reply awaited had been received. The case in question was a very serious one, which deserved to be given urgent and priority consideration. She therefore thought that the Sub-Commission should take up the matter immediately.

4. *Mr. Diaconu* said he could not see what there was to discuss. The Sub-Commission had wanted to obtain some information, it had obtained it and there was nothing more to add. In any event, if the Sub-Commission wanted to talk about the matter again, it should do so on Friday, as agreed, and not at the current meeting.

5. *Ms Palley* said it had been decided that the question should be considered once the Sub-Commission had received an answer to its telegram. Furthermore, according to that reply, Mr. Mazilu's mother-in-law had said that she did not know where her daughter and son-in-law had gone with their family. The genuineness of that information was, in her view, open to serious doubt.

6. *Mr. Joinet* said he thought that the Sub-Commission should accede to Mr. Diaconu's request. Considering the seriousness of the matter, it ought not to be dealt with too hastily. The experts needed to study the text of the telegram and consider what action was required. He was grateful to Mr. Diaconu for agreeing to the matter being discussed the following day, since that meant he accepted the principle of discussion.

7. *Mr. Diaconu* pointed out that he had only agreed to discuss the reply received within the framework of the organization of work, and nothing more.

8. *Mr. Yimer* said that the Sub-Commission had agreed to consider the matter on Friday morning and should hold to that decision.

9. *The Chairman* noted that there seemed to be a consensus that the matter should be considered the following morning.

10. *Mr. Carey* proposed that, in the meantime, the Sub-Commission should send another telegram to Mr. Mazilu's mother-in-law requesting her to ascertain at what health resort Mr. Mazilu and his family were staying.

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E/CN.4/Sub.2/1988/SR.7
18 November 1988.

60. Summary Record of the 7th Meeting

Held at the Palais des Nations, Geneva,
on Friday, 12 August 1988, at 10 a.m.

Chairman: Mr. Bhandare

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ORGANIZATION OF WORK

55. *The Chairman* reminded members of the Sub-Commission that a telegram had been sent to Professor Mazilu through the United Nations Infor-

mation Centre at Bucharest. The Centre had informed Mr. Martenson that it had not been possible to deliver the telegram to Mr. Mazilu, who, according to his mother-in-law, had left Bucharest with his family a few days before in order to follow a course of medical treatment at a health centre whose address had not been indicated.

56. *Mr. Diaconu*, speaking on a point of order, said that, since the Sub-Commission was considering the organization of its work, he would like to know whether the other special rapporteurs had replied to the invitations sent to them to be present in the Sub-Commission during the consideration of their reports and, if so, what replies had been received.

57. *The Chairman* replied that Mr. Singhvi had stated that he would be present during the third week of the session. Mr. Mubanga Chipoya had also announced his arrival, and two of the other special rapporteurs were already present. Mr. Bossuyt would apparently also be present.

58. *Mr. Eide* said that, since the initial efforts made to establish contact with Mr. Mazilu had not produced satisfactory results, it was necessary to act promptly. Before continuing his comments on that point, he would like to give his view of what the task of a special rapporteur involved. As everyone was aware, the Sub-Commission was composed of independent experts, and their independence was even more important in the case of special rapporteurs, who had to endeavour to rise above their personal preferences or the interests of their countries in order to take into account only the values set forth in the Universal Declaration of Human Rights. There was no doubt that Mr. Mazilu had accepted the work entrusted to him in that spirit and had undertaken to study how young people could participate in the implementation of human rights throughout the world. Furthermore, he had read Mr. Mazilu's letter and had no doubt that Mr. Mazilu had intended to continue his work.

59. Bearing all that in mind, he proposed that a member of the Sub-Commission should visit Mr. Mazilu, wherever he might be, to assist him at least in completing his preliminary report, and that Mr. Martenson should designate an official of the secretariat to accompany the expert to be entrusted with that mission. He was confident that the members of the Sub-Commission would approve that suggestion by consensus. He hoped that the Romanian authorities would take the necessary steps to facilitate the journey of the two persons concerned to Romania so that they could establish contact with Mr. Mazilu in the course of the following week. If such contact was not established the Sub-Commission could then envisage taking other measures.

60. *Mr. Joinet* recalled that he himself had already made a similar proposal, which he had subsequently withdrawn pending the receipt of a reply to the telegram sent to Mr. Mazilu by the Chairman of the Sub-Commission. Other solutions had been envisaged during private conversations. One of them was to send a delegation of four or five persons to Romania, but that might give the impression that the Sub-Commission wished to check up on the Romanian authorities, which had not been its intention. It had also been suggested that Mr. Martenson should be requested to persevere in his representations. However, in view of the poor results of the efforts already made by both Mr. Martenson and Mr. Despouy, and of the inadequacy of the replies given to the Sub-Commission's requests, the only valid solution was to send one of the Sub-Commission's experts to see Mr. Mazilu. Such an approach would, however, be of a friendly nature, from colleague to colleague, as it were. Consequently, it would be necessary to request the Romanian authorities to facilitate the issue,

at an early date, of two visas, one for the Sub-Commission's expert, who would be designated on the basis of purely logical criteria, and the other for an official of the secretariat, who would be responsible for assisting the expert in technical and logistical matters. The mandate of the expert thus designated would, of course, have to be limited strictly to the question of preparing the report on human rights and youth.

61. He left it to the wisdom of the Sub-Commission to find a solution which could be adopted by consensus and receive the approval of the Romanian authorities.

62. *Mr. Flinterman* said that it was difficult to believe that a man as devoted to the cause of human rights as Mr. Mazilu could have left his home without informing the Sub-Commission that he would not be able to present his report. Everything should therefore be done to enable him to participate in the Sub-Commission's session. In his opinion, the proposal just made by Mr. Eide was the best way of establishing contact with Mr. Mazilu. If that initiative failed, the Sub-Commission could then reconsider the matter and envisage other measures.

63. *Mrs. Attah* wondered whether it was advisable to send two persons to see Mr. Mazilu, in so far as his whereabouts was not known. In her opinion, it would be better first of all to try to find out where he was, and perhaps to wait until the United Nations Information Centre at Bucharest had established contact with him.

64. *Mr. Varela Quirós* said that it was true that the persons sent to Mr. Mazilu might not be able to carry out their mission if they did not know his whereabouts. On the other hand, however, it was important that the Sub-Commission should know what had become of the report on human rights and youth. It would therefore be better, in his opinion, first of all to exhaust all the available means of obtaining the report before the end of the session. If all the efforts made proved vain, the appropriate decisions should then be taken at the end of the session.

65. *Mr. Joinet* said the question must be settled with the utmost urgency. It was therefore important that a decision should be taken promptly on the proposal that one of the Sub-Commission's experts and an official of the secretariat should be sent to see Mr. Mazilu. The Sub-Commission must be able to continue its work.

66. *Mr. Eide* said, for Mrs. Attah's information, that it should not be difficult for the Romanian authorities to ascertain Mr. Mazilu's whereabouts. Immediate action was needed, so that the Sub-Commission could organize its work promptly. He was sure that Mrs. Attah would appreciate the advisability of a consensus.

67. *Mrs. Warzazi* said that, in order to be able to envisage a rapid solution, it would first of all be necessary to be sure that the Romanian authorities would grant a visa to the persons to be designated to travel to Romania.

68. *The Chairman* said that it was essential to solve the problem promptly, since a member of the Sub-Commission was involved. It was, however, clear that the co-operation of the Romanian authorities would be needed. He accordingly requested the Observer for Romania to be so kind as to inform the Sub-Commission of his Government's intentions.

69. *Mr. Chirila* (Observer for Romania) said that his country's participation as an observer in the fortieth session of the Sub-Commission was proof of the interest which it took in the Sub-Commission's work, which it had, moreover, already shown by nominating Romanian experts for membership.

70. As far as the situation with regard to the report on human rights and

youth was concerned, he recalled that Mr. Mazilu, a former counsellor at the Ministry of Foreign Affairs, had been elected a member of the Sub-Commission on the proposal of the Romanian Government and had participated in the Sub-Commission's work until 1987. At the beginning of 1987, Mr. Mazilu had suffered a heart attack and had frequently had to be hospitalized since then. The Permanent Mission of Romania to the United Nations Office at Geneva had informed the United Nations Centre for Human Rights on several occasions that Mr. Mazilu was unable to travel and consequently would not be able to participate in the Sub-Commission's session. For the same reasons, Mr. Mazilu had decided to retire as from 1 December 1987. A certified copy of the medical certificate attesting that the former counsellor had retired for health reasons had been sent to the Centre for Human Rights. Mr. Mazilu's state of health had been confirmed in the telegram sent to the Centre for Human Rights by the United Nations Information Centre at Bucharest. He did not therefore see why that information was being questioned, and in his opinion all that remained to be done was to close the discussion on the matter, even though it was a procedural discussion, and to seek a solution to the problem of preparing the report, in view of the indisposition of the expert entrusted with that task. Any solution that cast doubt on the information supplied by the Romanian Government to the United Nations Centre for Human Rights would be unacceptable.

71. *Mr. Eide* said that the Observer for Romania might perhaps explain why it had not been possible to obtain the address of the establishment where Mr. Mazilu was receiving medical treatment.

72. *Mr. Alfonso Martinez* proposed that, in view of the late hour, the Sub-Commission should continue its discussion at the next meeting. He would like the text of Mr. Eide's proposal and of the comments made on it by Mr. Joinet, as well as the texts of the telegram sent by the United Nations Information Centre at Bucharest and of the statement made by the Observer for Romania, to be distributed to the members of the Sub-Commission.

73. *The Chairman* said that it was not a question of doubting the validity of the medical certificate which had been sent to the Centre for Human Rights. It was, however, only to be expected that the members of the Sub-Commission should be concerned about Mr. Mazilu's situation and attempt to establish contact with him, if only to tell him to discontinue his work if he was too ill to be able to complete his report. It would therefore be useful to have his address in order to be able to write to him or to visit him. He requested the Observer for Romania to be so kind as to hand the text of his statement to the Secretariat so that it could be distributed.

74. *Mr. Joinet* said that if Mr. Mazilu was in fact ill, he would need help to complete his report and it would be necessary to sent another expert to see him. Moreover, the Romanian authorities should have no difficulty in ascertaining the whereabouts of a retired civil servant.

The meeting rose at 1.15 p.m.

E/CN.4/Sub.2/1988/SR.9
23 November 1988.

61. Summary Record of the 9th Meeting

Held at the Palais des Nations, Geneva,
on Monday, 15 August 1988, at 10 a.m.

Chairman: Mr. Bhandare

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ORGANIZATION OF WORK *(continued)*

31. *The Chairman* reminded the Sub-Commission that a further telegram had been sent to Bucharest, and contact made by telephone with the Bucharest United Nations Information Centre. The last message received from the Centre read as follows: "I phoned repeatedly at Mr. Mazilu's home and nobody answered. From the previous talk with the Professor's mother-in-law, I understood that she does not live permanently in Mr. Mazilu's house. I will repeat the call during the following days." He noted that that new message told the Sub-Commission nothing new, since it was already aware that Mr. Mazilu, his wife and children had left Bucharest for a health resort where Mr. Mazilu was to have medical treatment, and that the latter's mother-in-law knew nothing about the health resort in question. He accordingly invited members of the Sub-Commission to give their views on that message, endeavouring to avoid political issues; the Sub-Commission's aim should be to ensure that the study entrusted to Mr. Mazilu was brought to a satisfactory conclusion, and also to try to ensure that he came to present it in person.

32. *Mr. Diaconu* said that the Sub-Commission ought to be concerning itself with the report on human rights and youth. Everyone had heard what the Romanian Government had had to say on the matter. The Government had expressed itself in clear and precise terms. Mr. Mazilu was ill: that fact had been confirmed by the information provided in the medical file communicated to the Sub-Commission in 1987, as well as by the United Nations Information Centre in Bucharest. Clearly, therefore, Mr. Mazilu would not be able to come to Geneva to present his report. He himself had been present when Mr. Mazilu had had to be taken to hospital. On two occasions the latter had tried to return to work at the Ministry, and each time he had had to abandon the attempt. It was an ordinary human story, and should not be made into anything else.

33. He noted that the draft decision before the Sub-Commission appeared to call in question the medical opinion on which the Romanian Government had relied, or at least to suggest that the facts that had given grounds for that opinion should be checked. The draft decision also implied that if Mr. Mazilu was in fact unable to complete his work and come to Geneva, the expert sent to Bucharest would be able to complete it for him. He himself considered that in order to complete the report there was no need to go to Bucharest; that could be done in Geneva. For the present, the Sub-Commission should begin to tackle the basic question, namely human rights and youth, and should try to find the best possible way of doing it. He himself was ready to co-operate with the other experts on the Sub-Commission, both now and in the future. He did not think that adoption of the draft decision submitted to the Sub-Commission would help to advance work on the question. It would have no effect in practice and it might be detrimental to the prestige of the Sub-Commission and place the Chairman and experts in an awkward position. It would be better not to take a decision, but rather to tackle the substantive issue.

34. *The Chairman* pointed out that no one had questioned the competence of the doctors involved, or the fact that Mr. Diaconu had been present when Mr. Mazilu had had to be taken to hospital. In any event, the point at issue was not what the doctors had said but what Mr. Mazilu himself had to say. It was for him to inform the Commission about the progress of his report, and to say whether or not he was in a position to continue his task. He therefore requested Mr. Diaconu and the observer for Romania to help the Sub-Commission to make direct contact with Mr. Mazilu, so that the latter could state in person what his intentions were.

35. *Mr. Eide* endorsed what the Chairman had said. As he himself had already pointed out a few days ago, special rapporteurs, once appointed, had an obligation to complete their tasks, either within the Sub-Commission or outside it, unless it proved impossible for them to do so. The question was not therefore one which could be decided by either a Government or by the Sub-Commission; in the circumstances, only Mr. Mazilu could say whether or not he was in a position to complete the mission entrusted to him. He was glad to see that there were two persons present who were closely acquainted with Mr. Mazilu and who had been present when the latter had suffered his heart attack. They should therefore be able to help the Sub-Commission to find out where he was. In any event, every State Member of the United Nations had an obligation to co-operate in the promotion and protection of human rights, and the least that a Government could do in that regard was to facilitate contacts between a United Nations body and its special rapporteur. He therefore repeated the question he had put to the observer for Romania at an earlier session, namely, whether it would be possible for the Romanian authorities to obtain Mr. Mazilu's present address, and if not, why not, so that the Sub-Commission could know and understand the reasons for Mr. Mazilu's absence.

36. *Mr. Joinet* found Mr. Diaconu's arguments unconvincing. It was not a matter of questioning the competence of any doctor in particular, or the steps taken by the United Nations Information Centre. It was a matter of allowing Mr. Mazilu to decide for himself whether or not he could accomplish the task that had been entrusted to him, and to inform the Sub-Commission accordingly, directly and in person. Mr. Diaconu seemed to be very concerned to make a positive contribution to the Sub-Commission's work on human rights and youth, and he understood he had already submitted a working paper on the subject. At the moment, however, the Sub-Commission was confronted with a difficulty of a constitutional nature, in view of the fact that a special rapporteur's mission ended only by his personal resignation or by his death. Accordingly, only Mr. Mazilu could decide whether he should continue his work or whether he should be replaced. Mr. Diaconu had stated that there would be no point in an expert of the Sub-Commission, assisted by a member of the secretariat, going to Bucharest merely in order to do Mr. Mazilu's work for him. As he saw it, that was not the issue. The secretariat had always helped members of the Sub-Commission in their work, and it would be for that purpose that a member of the secretariat would be going to Bucharest. In addition, in view of the contradictory information transmitted to the Sub-Commission concerning Mr. Mazilu, the expert sent by the Sub-Commission would be instructed to obtain from Mr. Mazilu's own mouth a decision concerning his work. He did not think that sending an expert assisted by a member of the secretariat could be detrimental to the Sub-Commission. On the contrary, if it did not wish to lose prestige, it should take action when, after a year's efforts, it still had not succeeded in obtaining any reply to its questions regarding a situation which — if it were to continue — could be likened to a "disappearance".

37. *Mrs. Warzazi* said the object of the measures taken by the Sub-Commission was to assist Mr. Mazilu in preparing his report. It was for the same reason that Mr. Eide and Mr. Joinet had submitted their draft decision. With the same object in mind, she proposed that the text should be amended as follows : in the penultimate line of the second paragraph, after the words "to accompany", delete the rest of the sentence and substitute the words "the member of the Sub-Commission thus designated and to assist Mr. Mazilu in accomplishing his task".

38. *Mrs. Daes* formally proposed that the Sub-Commission should decide to request the outgoing Chairman to travel to Bucharest on its behalf in order to assist Mr. Mazilu, and to request the Under-Secretary-General for Human Rights to designate Mr. McCarthy or Mr. Keilan, who were the members of the secretariat competent to deal with the matter, to accompany Mr. Despouy.

39. *Mr. Diaconu* said that the amendment proposed by Mrs. Warzazi and the explanations that had been given did not alter the situation and did not make the draft decision any more acceptable. Mr. Joinet seemed to have introduced a new element into the debate by suggesting that the Sub-Commission expert who was to be sent to Bucharest would be instructed to make contact personally with Mr. Mazilu in order to acquaint himself with the latter's decision regarding his work, and not to concern himself with the actual report. If that was so, the draft decision would even raise more difficulties. He would like to take the floor again, after all members of the Sub-Commission had expressed their views.

40. *Mrs. Attah* considered that the Chairman had made a very useful proposal, which, if adopted, would enable the Sub-Commission to make progress on the matter.

41. *Mrs. Ksentini* asked the sponsors of the draft decision to explain what would be the practical effect of their proposal if, after the decision had been adopted, the Romanian Government refused to do what was requested of it.

42. *Mr. Joinet* replied that if — as he hoped — the reply of the Romanian Government was positive, the Sub-Commission expert sent to Bucharest could then ask Mr. Mazilu directly which of the two alternatives was correct. On the one hand, the Sub-Commission had been given to understand that Mr. Mazilu had resigned from all duties, including his duties as Special Rapporteur, while on the other hand, according to the Under-Secretary-General, Mr. Mazilu had given the impression throughout all the negotiations that he would like to continue his activities as Special Rapporteur. Thus, if the Government's reply was positive, the secretariat official who was to accompany the Sub-Commission expert would be there to provide technical assistance. On the other hand, if the Romanian authorities were not prepared to comply with the Sub-Commission's request, they would refuse to issue the two visas required. Of course, it could be argued that if a refusal was anticipated it was not worth making the application, but he himself believed that those involved should accept their responsibilities, and that a refusal to issue visas was in a way an acceptance of responsibility. At that stage, it could be considered that the Sub-Commission too had accepted its responsibilities by making the request, and opinion would decide.

43. *Mr. Eide*, in reply to Mrs. Ksentini, pointed out that the observer for Romania had not said that his Government was not willing to co-operate with the Sub-Commission. He had simply stated that Mr. Mazilu was ill and could not carry out his mission. That was the opinion of the Romanian authorities; however, the Sub-Commission had its own opinion, and for that reason it wished to make direct contact with Mr. Mazilu. He was confident that the Romanian authorities would not refuse to co-operate with the Sub-Commission on such an essentially practical matter.

44. *Mr. Despouy* shared the view expressed by Mr. Eide and Mr. Joinet, but said that before a decision was adopted he would like once again to ask the observer for Romania to indicate as clearly as possible whether his Government was prepared to co-operate with the Sub-Commission and whether it could agree, in principle, to the idea of a visit from an expert of the Sub-Commission accompanied by a member of the secretariat. The time had come for the Romanian authorities to say what they thought about the draft decision under consideration. He pointed out that he was making a formal request, and hoped that the reply would be clear and specific.

45. *Mr. Assouma* noted that the case of Mr. Mazilu posed a difficult problem for the Sub-Commission. He endorsed what had been said by the Chairman. However, if certain experts were certain that they knew where Mr. Mazilu was, they should say so before the Sub-Commission began its consideration of the draft decision.

46. *Ms Palley* welcomed the constructive statement made by the observer for Romania. She was convinced that the Romanian authorities had ways of making contact with all Romanian citizens, wherever they might be. In any event, it would seem to be in the Romanian Government's own interest to allow members of the Sub-Commission to go to Romania so that the debate might be concluded.

47. *Mrs. Bautista* pointed out that until Mr. Mazilu was located, the Sub-Commission would have no way of knowing the seriousness of his condition. Accordingly, the first thing to do was to establish Mr. Mazilu's whereabouts, because if that should prove impossible, or if Mr. Mazilu was not in a condition to complete his study, the Sub-Commission's efforts would have been wasted. The Sub-Commission had first of all to establish whether or not Mr. Mazilu was in a position to complete his work.

48. *Mr. Joinet* suggested that the Sub-Commission might defer a decision on the draft text for two days, in order to give the Romanian authorities time to locate Mr. Mazilu.

49. *Mr. Eide* said he could agree to defer consideration of the draft decision provided that the observer for Romania was in fact prepared to give a reply.

50. *Mr. Varela Quirós* thought that Mr. Joinet's suggestion, far from simplifying matters, would tend to hold everything up. The Sub-Commission should take a decision without delay on the text before it.

51. *Mr. Alfonso Martínez*, speaking on a point of order, said he would like to know whether the sponsors of the draft decision intended to invoke rule 51 *(c)* of the rules of procedure, which provided that motions for the adjournment of debate on the question under discussion had priority over all other proposals or motions (with the exception of those concerning the suspension or adjournment of the meeting itself).

52. *Mr. Eide* said he would simply like to hear what the observer for Romania had to say to the Sub-Commission.

53. *Mr. Chirila* (Observer for Romania) said he had nothing to add to the statement he had made on Friday, 12 August, in regard to the view of the Romanian authorities as to the procedure to be adopted. He wished to reiterate, however, that any measure that might be regarded as a form of inspection or control would not be acceptable to his country's authorities.

54. *Ms Palley* said that since Mr. Mazilu continued to be the Sub-Commission Special Rapporteur until he resigned his office, it might be better to amend the end of the first paragraph of the draft decision by substituting the following wording for the last part of the sentence "and to ask the Special Rapporteur whether or not he wished to resign".

55. *Mr. Joinet* pointed out that that question had been put to Mr. Mazilu repeatedly throughout the whole of the past year in the course of his contacts with the secretariat and the outgoing Chairman, as Mr. Mazilu himself had indicated in a letter. Accordingly, the sole task of the Sub-Commission expert who was to go to Romania would be to find out whether or not Mr. Mazilu had or had not changed his mind. He thanked the observer for Romania for not having made the situation irreversible, and urged the Sub-Commission to decide that day, or within a reasonable time, on the draft decision he was co-sponsoring, as amended by Mrs. Warzazi.

56. *Mr. Eide* said he was somewhat surprised at the statement made by the observer for Romania. In fact, the Sub-Commission had never implied that it could take any initiatives that resembled measures of inspection or control. While on the one hand it appeared that Mr. Mazilu wished to continue with his study, on the other hand, if his condition was sufficiently serious to warrant intensive treatment, the Romanian authorities would know where he was. In any event, Mr. Mazilu should be given the opportunity of stating whether or not he was able to complete his study, if need be with assistance.

57. *Mr. Varela Quirós* feared that if the Sub-Commission were to defer its decision on the draft text under consideration, a practical problem would arise, because the expert proposed by Mrs. Daes to go to Romania, Mr. Despouy, had to leave Geneva at the end of the week.

58. *Mr. Despouy* pointed out that no formal decision had been taken on his appointment. It might be advisable to allow the Romanian authorities a little time to consider the situation and to define their position. In fact, if the Sub-Commission were to adopt the draft decision at the present meeting, and if events subsequently proved that the initiative was viewed by the Romanian authorities as interference, the Sub-Commission's hopes would be dashed. Accordingly, he would like to have clarifications within two days both on the scope of the text in question and on the position of the Romanian authorities. In addition, he would like to know which of the Sub-Commission's rules of procedure Mr. Joinet intended to invoke in support of his proposal.

59. *Mr. Joinet* reminded the Sub-Commission that he had stated a week ago that he wished to avoid as much as possible recourse to procedural tactics, because he preferred consensus. Rules 49 and 51 of the rules of procedure did not seem to support consensus. It was therefore for the Sub-Commission to decide now whether to take a decision without vote on the text under consideration, under rule 57 of the rules of procedure, or to allow the Romanian authorities more time by deferring a decision for two days.

60. *The Chairman* wondered if it would not be better to request the Secretary-General to use his good offices in order to achieve the object sought by the Sub-Commission. That solution would avoid any confrontation, and would dispel any fears of interference or control.

61. *Mrs. Attah* was in favour of the idea of using the diplomatic channel.

62. In reply to a question by *Mr. Ilkahanaf*, *the Chairman* said that the Sub-Commission might request the Secretary-General to approach the Romanian authorities with a view to ascertaining Mr. Mazilu's whereabouts, and to establish through United Nations channels, the Special Rapporteur's wishes.

63. *Mrs. Warzazi* considered that the Secretary-General's mission should not be confined simply to finding out where Mr. Mazilu was.

64. *Mr. Joinet* said he was not clear what was to be understood by "good offices" in the circumstances; it would be better to give the Secretary-General a clearly defined brief, with a fixed time-limit, without deferring the debate until

the next session. Even if the Sub-Commission were to decide to request the Secretary-General to intervene, a reply would be needed within two days.

65. *The Chairman* feared that the Secretary-General would be far too busy for so close a deadline to be set.

66. *Mr. Eide* did not see the point of the Sub-Commission calling on the good offices of the Secretary-General if it could not set a deadline. He would propose a text reading as follows:

> "The Sub-Commission requests the Secretary-General to establish contacts with the Government of Romania informing the Government that the Sub-Commission is in urgent need of immediate contact with its Special Rapporteur, Mr. Mazilu, and therefore requests the Government of Romania to locate Mr. Mazilu and to facilitate a visit to him by the representatives of the Sub-Commission and of the secretariat to help him complete his study, if he so wishes. The Secretary-General is requested to report back to the Sub-Commission not later than Wednesday 17 August."

67. *Mr. Sadi* pointed out that the Sub-Commission did not have the necessary authority to apply directly to the Secretary-General of the United Nations. It must always act through the Commission on Human Rights.

68. *Mr. Alfonso Martínez* did not see how the procedure proposed could involve any legal problems. The Sub-Commission was free to take any decision without consulting its superior bodies, provided that that decision had no financial implications.

69. *The Chairman* said that he saw no legal difficulties in the proposed procedure. It was based on a paragraph in an earlier report of the Sub-Commission which indicated that, in accordance with an opinion given by the Office of Legal Affairs in 1980, the Sub-Commission could rely on the services of the Secretary-General to obtain information from Governments, in view of the fact that every United Nations body had the right to be assisted by the Secretary-General in the accomplishment of its task. The Sub-Commission had thus addressed numerous requests for assistance directly to the Secretary-General. Although Article 98 of the Charter referred explicitly to the main organs of the United Nations, it did not imply that subsidiary organs did not enjoy similar assistance by the Secretary-General. In fact, the formulation of the first part of Article 98 was not only repeated in the rules of procedure of the General Assembly and of the Economic and Social Council, but was also included in the rules of procedure of the functional commissions of the Council, which governed the operation of the Sub-Commission. Rule 25 thereof provided that "the Secretary-General shall act in that capacity in all meetings of the Commission". In addition, rule 26 of the rules of procedure provided that the Secretariat should "generally perform all other work that may be required" (see document E/CN.4/Sub.2/1982/3 annex 1, para. 34).

70. *Mr. Joinet* said he took it the Sub-Commission would therefore be deciding to defer consideration of the draft decision in question until Friday, 19 August. He was not clear what was the purpose of that decision.

71. *The Chairman* said that the Sub-Commission would simply be required to take a decision on the proposal just made by Mr. Eide. Incidentally, it would seem preferable to set the deadline for Wednesday, 17 August and not Friday, 19 August.

72. *Mr. Martenson* (Under-Secretary-General for Human Rights), replying to a question by *Mr. Eide*, said that if the Sub-Commission adopted the decision proposed, the Centre for Human Rights would immediately get in touch with the Secretary-General, who would take the appropriate action.

73. *Mr. Diaconu* said that the inclusion, in the Secretary-General's brief, of the idea of a visit by a member of the Sub-Commission to Romania would certainly not ease the way for a dialogue with the Romanian authorities. It would therefore be better to delete that idea from the proposal.

74. *The Chairman*, in reply to a question from *Mr. Tian Jin*, said that he intended to reformulate Mr. Eide's proposal taking into account the comment made by Mr. Diaconu, and would submit a revised text to the Sub-Commission at the next meeting.

75. *Mr. Joinet* said he understood the Under-Secretary-General had no objection to the deadline being set for Wednesday, 17 August at 3 p.m.

76. *Mr. Eide* said he too would prefer the deadline to be set for Wednesday, 17 August. He would like to know whether Mr. Diaconu could suggest any better way of quickly establishing contact with Mr. Mazilu. Would he like Mr. Mazilu to be asked to appear before the Sub-Commission in person?

The meeting rose at 1 p.m.

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62. Summary Record of the 10th meeting (held at the Palais des Nations, Geneva, on Monday, 15 August 1988, at 4 p.m.)[1] E/CN.4/Sub.2/1988/SR.10

63. Summary Record of the 11th meeting (held at the Palais des Nations, Geneva, on Tuesday, 16 August 1988, at 10 a.m.)[1] E/CN.4/Sub.2/1988/SR.11

E/CN.4/Sub.2/1988/SR.14
16 September 1988.

64. Summary Record of the 14th Meeting

Held at the Palais des Nations, Geneva,
on Wednesday, 17 August 1988, at 4 p.m.

Chairman: Mr. Bhandare

ORGANIZATION OF WORK

42. *Mr. Martenson* (Under-Secretary-General for Human Rights) said that he had just received a verbal report on the contacts between the Secretary-General and the Government of Romania concerning the possibility of establishing contact with Mr. Mazilu, the Sub-Commission's Special Rapporteur on human rights and youth. The Secretary-General's office had raised the question with the chargé d'affaires of the Romanian Permanent Mission in New York. The latter's reply had stated that Mr. Mazilu had been ill for some time and had retired from the Foreign Ministry which he had so informed the Commission on Human Rights and the Sub-Commission. He had thus been unable to proceed with his study on human rights and youth, and the Government of

[1] Document not reproduced. *[Note by the Registry.]*

Romania had not presented him as a candidate for re-election to the Sub-Commission. The reply went on to say that the Secretariat had no legal basis for intervention in a matter between a citizen and his Government, or for any form of investigation in Bucharest, which would constitute interference in Romania's internal affairs. For the reasons given above, the Romanian Government rejected the request that a member of the Sub-Commission and a member of the Secretariat should visit Mr. Mazilu.

43. The Secretary-General's office had emphasized that the Sub-Commission's decision had been based on the need to organize its work and did not constitute an investigation. It had also pointed out that Mr. Mazilu had been appointed as Special Rapporteur in his personal capacity. The appointment was not contingent upon his membership of the Sub-Commission.

44. *Mr. Eide* expressed his gratitude to the Secretary-General for the rapid action which had been taken. The information which had just been presented to the Sub-Commission showed that Romania might be intending to violate its basic obligations under the Charter of the United Nations. However, he did not expect the matter to end there, since the Sub-Commission had still not received an answer on the two fundamental points on which it needed information: the whereabouts of Mr. Mazilu and how the Sub-Commission could establish proper contact with him. Mr. Mazilu would remain a Special Rapporteur of the Sub-Commission until he informed it personally that he was unable to continue. Any further action on the matter should be postponed for a few days to allow the Romanian Government the opportunity to co-operate further.

45. *Mr. Diaconu* said that, once again, the tone of the debate was becoming more heated, which would not achieve any result. He could not accept the allegation that his country intended to violate its basic obligations under the Charter of the United Nations.

46. *Mr. Joinet* said that the Romanian Government had rejected one of the Sub-Commission's proposals, namely that of a visit to Mr. Mazilu, but it had not yet rejected the others. Surely the Government could find some other way for the Sub-Commission to establish contact with its Special Rapporteur? The problem was basically a simple one, and it should be possible to find a solution acceptable to all parties.

47. *The Chairman* said that he was disappointed with the Romanian Government's response, particularly since it did nothing to solve the Sub-Commission's main concern, which was to establish whether Mr. Mazilu would be able to complete his study. He suggested that the Sub-Commission should inform the Secretary-General of its response to the Romanian Government's statement, and ask him to make further efforts to achieve a solution.

48. *It was so agreed.*

The meeting rose at 6.10 p.m.

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65. Summary Record of the 23rd meeting (held at the Palais des Nations, Geneva, on Wednesday, 24 August 1988, at 10 a.m.)[1] E/CN.4/Sub.2/1988/SR.23

[1] Document not reproduced. *[Note by the Registry.]*

66. Summary Record of the 25th meeting (held at the Palais des Nations, Geneva, on Thursday, 25 August 1988, at 11 a.m.)[1] — E/CN.4/Sub.2/1988/SR.25

67. Summary Record of the second part (public) of the 30th meeting (held at the Palais des Nations, Geneva, on Monday, 29 August 1988, at 5.45 p.m.)[1] — E/CN.4/Sub.2/1988/SR.30/Add.1

E/CN.4/Sub.2/1988/SR.32
6 September 1988.

68. Summary Record of the First Part of the 32nd Meeting

Held at the Palais des Nations, Geneva,
on Tuesday, 30 August 1988, at 3 p.m.

Chairman: Ms Palley (later: Mr. Bhandare)

[Para. 9 not reproduced]

10. *[Mr. van Boven]* The situation regarding the prevention of discri .nation and protection of children: human rights and youth, was unsatisfactory. The Sub-Commission had a Special Rapporteur in Mr. Mazilu who however had been unable to attend the Sub-Commission in order to present his report. In that connection, he greatly regretted the lack of co-operation of the Romanian authorities. The Sub-Commission must insist on Mr. Mazilu's attendance in the future. The matter could not be ignored.

. . . . . .

[Paras. 42-45 not reproduced]

46. *[Mr. Eide]* He was unable to comment on the substance of the study on human rights and youth (sub-item *(c)*) because Mr. Mazilu, the Special Rapporteur, had been unable to come to Geneva to submit his study. He understood that the Romanian authorities had even refused to allow United Nations officials in Bucharest to visit Mr. Mazilu's home in order to arrange for him to travel to Geneva. Any allegation that Mr. Mazilu was unable or unwilling to carry out the study therefore lacked credibility. However, Mr. Mazilu continued to be the Special Rapporteur for the study on human rights and youth. He should therefore be requested to attend the forthcoming sessions of the Sub-Commission to present his study, unless he clearly indicated that he was unable or unwilling to do so. The Sub-Commission had been informed that Mr. Mazilu enjoyed the privileges and immunities necessary for the performance of his duties and the refusal by the Romanian authorities to allow him to attend the current session must be seen as a breach of their duty to co-operate. Draft resolution E/CN.4/Sub.2/1988/L.25 urged the Government of Romania to respect the provisions of the Convention on the Privileges and Immunities of

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[1] Document not reproduced. *[Note by the Registry.]*

the United Nations. In the event that the Government of Romania did not concur in the applicability of the Convention, the Commission on Human Rights was invited to urge the Economic and Social Council to request an advisory opinion from the International Court of Justice on the applicability of the relevant provisions of that Convention to the present case. He had been informed that the reservation to that Convention made by the Romanian authorities might preclude that course of action and he was therefore requesting a legal opinion from the Office of Legal Affairs. That request would read:

> "Does the reservation which Romania has made under Section 30 of the Convention on the Privileges and Immunities of the United Nations prevent the organ competent to do so from requesting an advisory opinion from the International Court of Justice with respect to the dispute which has arisen between the United Nations and Romania, namely, on the legal question of the applicability of Article VI and Section 22 of the said Convention to the case of Mr. Mazilu, Special Rapporteur of the Sub-Commission?"

and secondly, if the reply to the first question was negative, what was the legal implication of the reservation made by Romania? He would like that legal opinion as soon as possible but, in the meantime, he re-emphasized that Mr. Mazilu remained the Special Rapporteur on the agenda item.

47. *Mr. Alfonso Martínez* reminded the Sub-Commission that the preceding week he had asked the Secretariat if there was any reason why the Sub-Commission had not received, as it had on previous occasions, the original of the document said to have come from Mr. Mazilu. Having received no reply, he wished to ask whether there was any explanation of why the original or at least a photocopy of the document had not been received and whether that document could not be distributed to all members of the Sub-Commission.

[Para. 48 not reproduced]

49. *Mr. Diaconu* pointed out that Romania's reservation in no way precluded the Secretary-General from requesting an advisory opinion although it would prevent the International Court of Justice from dealing with the problem. He would comment on the draft resolution once it had been introduced; however, he thought it exaggerated to speak of a refusal to co-operate. He had further doubts concerning the question of privileges and immunities, which applied only from the time when the expert began his mission for the United Nations. Until that time, they covered only what he said and wrote in his capacity as an expert.

50. *The Chairman* wondered if Mr. Diaconu meant that he thought the Sub-Commission should file a case with the International Court of Justice without obtaining any prior legal opinion and leave the decision to the Court.

51. *Mr. Chernichenko*, speaking on a point of order, expressed concern at the amount of time expended on the case of Mr. Mazilu in which the Secretary-General could take independent action without any prompting from the Sub-Commission. The latter should show some sense of moderation and await any additional information the Secretary-General might be able to provide.

52. *Mrs. Warzazi*, supported by *Mr. Joinet*, said that any further discussion of the matter should be postponed until the introduction of the relevant draft resolution.

E/CN.4/Sub.2/1988/SR.36/Add.1
30 September 1988.

69. Summary Record of the Second Part of the 36th Meeting

Held at the Palais des Nations, Geneva,
on Thursday, 1 September 1988, at 6.15 p.m.

Chairman: Mr. Bhandare

(c) *Prevention of discrimination and protection of children: human rights and youth*

Draft resolution E/CN.4/Sub.2/1988/L.25/Rev.1

15. *Mr. Eide* said that the main purpose of the revised draft resolution was to compress paragraphs 1 and 2 of draft resolution E/CN.4/Sub.2/1988/L.25. Members were familiar with its contents, and the Sub-Commission had sought a legal opinion from the United Nations on the matter. He therefore hoped that the draft resolution could be adopted quickly.

16. *Mr. Diaconu* said that, first it was his understanding that the Sub-Commission had decided to ask for a general opinion on the question of privileges and immunities. However, the Secretariat had taken the initiative of seeking an opinion on the case at hand, which it had received in the unduly short time of one day. In any event, that opinion would not resolve the problem, since it did not specify the privileges and immunities that were involved or the time-frame they covered but simply referred to the Convention on the Privileges and Immunities of the United Nations. Furthermore, he considered that the Sub-Commission was not competent to pass judgment on the question of privileges and immunities.

17. Second, the members of the Sub-Commission had been informed of certain letters, the texts of which had not been circulated in the proper manner. That was a highly irregular procedure, and he wondered whether the letters did indeed exist.

18. The draft resolution resembled a decision of an American court: it stated the facts, without stating the reasons on which its requests were based. It also contained a procedural element, namely the Sub-Commission's vote and the results of the vote, something he had never seen in a United Nations resolution.

19. The preamble to the draft resolution stated the erroneous theory according to which, if a rapporteur was unable to complete his report, he must be helped to do so. That was based on an illusion since there had been no report for three years. Someone else should therefore complete it. Further, the Romanian Government's reply was quoted in a truncated form, which was unacceptable.

20. In the operative part of the draft resolution, the Government was requested to co-operate "by ensuring that Mr. Mazilu's report be completed and presented ...". It was difficult to see how a Government could ensure such a thing. Concerning the reference in operative paragraph 2 to the applicability of the provisions of the Convention on Privileges and Immunities of the United Nations, he pointed out that not all the provisions of the Convention applied to the Romanian Government. As to the reference to a "difference" in the same paragraph, according to the legal opinion, there was no difference as yet since the problem had not been discussed with the Romanian Government.

21. After being told that United Nations bodies could not request an advisory opinion on the basis of Article 30 of the Convention, the sponsors of the draft resolution had found a procedural basis in General Assembly resolution 89 (I). As far as substance was concerned, however, a jurist would have to admit that such a request should be based on the Convention. Invoking the General Assembly resolution amounted to evading the provisions of the Convention, which was unacceptable from a legal standpoint.

22. The resolution was based neither on facts nor on well-founded points of law. It was designed not to open doors but to close them, and in adopting it the Sub-Commission would run the risk of again having no report at its following session. He himself would vote against the draft resolution, and he asked his colleagues not to support it.

23. *Mr. Cisse* (Secretary of the Sub-Commission) said that the names of Mr. Joinet and Mr. Varela Quiros should be added to the list of sponsors of the draft resolution.

24. *Mr. Joinet* said that according to Mr. Diaconu's reasoning, the Sub-Commission was to blame for the fact that Mr. Mazilu had not been able to complete his report. He was confident that each member would make a correct evaluation of the strength of Mr. Diaconu's arguments.

25. *Mr. Alfonso Martinez* recalled that he had decided not to participate in previous votes on the issue under discussion. However, the present case was slightly different. He believed that, in accordance with rule 54 of its rules of procedure, the Sub-Commission was not competent to take such a decision. He would therefore vote against the draft resolution.

26. *A vote was taken by roll-call on draft resolution E/CN.4/Sub.2/1988/L.25/Rev.1.*

27. *Mr. Laghmari, having been drawn by lot by the Chairman, was called upon to vote first.*

In favour: Mr. Assouma, Mr. Al-Khasawneh, Mrs. Bautista, Mrs. Daes, Mrs. Flores, Mr. Eide, Mr. Hatano, Mr. Ilkahanaf, Mr. Joinet, Mrs. Palley, Mr. Rivas Posada, Mr. Sobarzo, Mr. Treat, Mr. Türk, Mr. van Boven, Mr. Varela.

Against: Mr. Alfonso Martinez, Mr. Chernichenko, Mr. Diaconu, Mr. Tian Jin.

Abstaining: Mr. Laghmari, Mrs. Mbonu, Mr. Yimer.

28. *Draft resolution E/CN.4/Sub.2/1988/L.25/Rev.1 was adopted by 16 votes to 4, with 3 abstentions.*

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70. Provisional agenda for the forty-first session of the Sub-Commission: Chap. XVII. Consideration of the future work of the Sub-Commission and of draft provisional agenda for the forty-first session of the Sub-Commission (paras. 428-431)[1]

E/CN.4/1989/3
E/CN.4/Sub.2/1988/45

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[1] Document not reproduced. *[Note by the Registry.]*

71. Memorandum Dated 23 August 1988 from the Office of Legal Affairs to the Under-Secretary-General for Human Rights

23 August 1988.

SUBJECT: *Question of the applicability of the Convention on the Privileges and Immunities of the United Nations to the situation of Mr. Dumitru Mazilu charged by the Sub-Commission on Prevention of Discrimination and Protection of Minorities in its resolution 1985/12 with the preparation of a report on human rights and youth*

1. This responds to your request for a legal opinion on the above question set out in your telex of 22 August 1988.

2. The members of the Sub-Commission on Prevention of Discrimination and Protection of Minorities (the "Sub-Commission"), are not representatives of Governments but are acting in their personal capacity. In order to be able to perform their functions independently they must benefit from certain privileges and immunities. Therefore members of Sub-Commission, during their terms of office, are accorded the legal status of experts on mission for the United Nations within the meaning of Article VI of the 1946 Convention on the Privileges and Immunities of the United Nations (the "General Convention").

3. In 1984 the Commission on Human Rights (the "Commission") by secret ballot elected Mr. Mazilu as one of the 26 members of the Sub-Commission, for a term of three years to expire on 31 December 1986.

4. By its resolution 1985/12 adopted without a vote on 29 August 1985 at the 37th meeting of its 38th session, the Sub-Commission requested Mr. Mazilu, "in order to facilitate the Sub-Commission's discussion of the topic, to *prepare a report* on human rights and youth . . ." (emphasis added). By paragraph 3 of that resolution it was decided "to deal with the question of 'Human Rights and Youth' under [the Sub-Commission's] item: 'Promotion, protection and restoration of human rights at national, regional and international levels' at its thirty-ninth session" (to be held in 1986). By paragraph 2, the Sub-Commission requested the Secretary-General "to provide all necessary assistance to Mr. Dumitru Mazilu for the completion of this task".

5. At the same session appropriate arrangements were made to provide the Sub-Commission at its 39th session with the requested report in all the official languages of the Sub-Commission, including reproduction and distribution. In addition, certain additional costs were estimated for 1986, to include one round-trip (Bucharest-Geneva-Bucharest) for consultation at the Centre for Human Rights at Geneva as well as subsistence (altogether US$1,900).

6. Due to financial reasons the Sub-Commission did not meet in 1986. As, however, during the same year the term of office of its members expired, ECOSOC at the 3rd plenary meeting of its 1987 Organization Session, on 6 February 1987, decided "to extend the term of office of the current members of the Sub-Commission . . . for one year to ensure their participation in the 39th session of the Sub-Commission to be held in 1987". This ECOSOC decision in effect extended by one year the time for Mr. Mazilu to present his report on human rights and youth.

7. Mr. Mazilu was not present at the 39th session of the Sub-Commission, and his report was not submitted. In explaining the reasons for Mr. Mazilu's absence, the Permanent Mission of Romania in Geneva informed the Sub-Commission that Mr. Mazilu had suffered a heart attack and would not be able to participate in the proceedings.

8. In the absence of Mr. Mazilu, the Sub-Commission, at its 37th meeting of its 39th session, on 4 September 1987, adopted decision 1987/112, by which it deferred "consideration of item 14 (Promotion, protection and restoration of human rights at national, regional and international levels) of its agenda to its fortieth session to be held in 1988". Furthermore it included in the provisional agenda for the 40th session, in item 15 *(d)*, a reference to Mr. Mazilu's report entitled "Prevention of discrimination and protection of children: human rights and youth" (E/CN.4/1988, para. 412, p. 120). In addition, Mr. Mazilu's report was referred to in the "List of studies and reports under preparation by members of the Sub-Commission in accordance with the existing legislative authority" in the chapter called "*Studies which do not imply new financial implications*" (*ibid.*, Annex III, table II)[1]. This list thus confirms that Mr. Mazilu was entrusted with the study on "Human rights and youth", the legislative authority for which was the Sub-Commission's resolution 1985/12 and its decision 1987/112. Under the provision "Timetable for completion" it was mentioned that the report in question is to be submitted at the fortieth session of the Sub-Commission.

9. It follows from the above that the Sub-Commission, with due knowledge of the fact that Mr. Mazilu's term of office was to expire at the end of 1987, expressly intended at its 39th session to extend Mr. Mazilu's assignment to prepare a report until the 40th session to be held in August 1988.

10. On 29 February 1988 the Commission elected new members of the Sub-Commission. In particular, Mr. Mazilu was succeeded by Mr. Ion Diaconu, expert from Romania. The newly elected Romanian expert presented to the Sub-Commission's Chairman a report on Human Rights and Youth for distribution as a document of the Sub-Commission. However, the Secretariat did not consider itself able to do so, as Mr. Diaconu lacked legislative authority in this matter.

11. According to the information available from the Sub-Commission, in April and May 1988 Mr. Mazilu transmitted to the Secretariat the first version of his main ideas on his report. From a letter by Mr. Mazilu dated 19 April 1988, it appears that he had been prevented by the Romanian authorities from presenting his report to the Sub-Commission. At the first meeting of the 40th session of the Sub-Commission, the outgoing Chairman (Mr. Despouy of Argentina) referred to the possibility that Mr. Mazilu's absence from the 39th session "had resulted from the attitude of the authorities of his country" (unofficial translation).

12. At the second meeting of its 40th session, on 9 August 1988, the Sub-Commission decided, in connection with the organization of its work, to invite all the rapporteurs, including Mr. Mazilu and other non-members of the Sub-Commission, to attend the session. However, the Sub-Commission failed to establish personal contact with Mr. Mazilu in Romania. Therefore, on 13 August the Sub-Commission took a decision to ask the Secretary-General to establish contact with the Government of Romania and "to convey the request that the Government assist in locating Mr. Mazilu and facilitate a visit to him by a member of the Sub-Commission and the Secretariat to help him in the completion of his study on Human Rights and Youth, if he so wishes". On 17 August the Chargé d'Affaires of the Romanian Permanent Mission in New York responded that

[1] This List was prepared in accordance with the Commission on Human Rights resolution 1982/23; it is contained in the Sub-Commission's report on its 39th session (E/CN.4/1988/37).

"Mr. Mazilu had been ill for some time and had retired from the Foreign Ministry, who had so informed the Commission and Sub-Commission in Geneva. He was thus unable to proceed with the preparation of the report on Human Rights and Youth. The Government had not presented him as a candidate for re-election to the Sub-Commission. The Secretariat had no juridical basis to invervene in a matter between a citizen and his Government. Moreover, there was no basis for any form of investigation in Bucharest, which would constitute interference in internal affairs. The Romanian Government rejected the request to allow a visit to Mr. Mazilu by a member of the Sub-Commission and the Secretariat for the reasons given above."

(As reported to the Sub-Commission on behalf of the Secretary-General.)

13. From the above it appears that the Sub-Commission considers that Mr. Mazilu, though now an ex-member, still has a valid assignment. It also appears that this would not run counter to the established practice of the Sub-Commission, which on several occasions has charged former members with the completion of reports that had been assigned to them as members (for example — Special Rapporteurs on Religious Intolerance; Right to Leave; Death Penalty)[1].

14. Consequently, Mr. Mazilu appears to have a valid assignment from the Sub-Commission, and when working or attempting to work on that assignment, is, therefore, performing a task or mission for the United Nations. From this it follows that he should be considered an "expert on mission for the United Nations" within the meaning of Article VI of the Convention on the Privileges and Immunities of the United Nations. As Romania became a party to that Convention on 5 July 1956, without any reservation to Article VI, Mr. Mazilu, *inter alia*, is entitled under Section 22 to the "privileges and immunities . . ., necessary for the independent exercise of his functions" during the period of his assignment, including the time spent on journeys in connection with his mission, and he is also to be accorded immunity from legal process even after completion of his assignment.

(Signed) Paul C. SZASZ.

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72. Memorandum Dated 30 August 1988 from the Legal Counsel to the Under-Secretary-General for Human Rights

30 August 1988.

SUBJECT: *Request for a legal opinion on the reservation made by Romania with respect to Section 30 of the Convention on the Privileges and Immunities of the United Nations of 13 February 1946*

1. This responds to your request for a legal opinion on behalf of the Sub-Commission on Prevention of Discrimination and Protection of Minorities in respect of the following two questions, conveyed to us by Ms Noll-Wagenfeld's memorandum of today's date :

[1] The precise data should be provided by CHR.

(a) Does the reservation which Romania has made under Art. 30 of the Convention on the Privileges and Immunities of the United Nations prevent the organ competent to do so, to request an advisory opinion from the International Court of Justice with respect to the dispute which has arisen between the United Nations and Romania, namely on the legal question of the applicability of Article VI/Section 22 of the said Convention to the case of Mr. Mazilu, Special Rapporteur of the Sub-Commission ?

(b) If the reply to question *(a)* is negative (i.e., the reservation does *not* prevent a request for an advisory opinion) what is then the legal implication of the reservation made by Romania ?

2. The reservation made by Romania on acceding to the Convention on the Privileges and Immunities of the United Nations on 5 July 1956 and referred to in these questions reads as follows :

> "The Romanian People's Republic does not consider itself bound by the terms of section 30 of the Convention which provide for the compulsory jurisdiction of the International Court in differences arising out of the interpretation or application of the Convention : with respect to the competence of the International Court in such differences, the Romanian People's Republic takes the view that, for the purpose of the submission of any dispute whatsoever to the Court for a ruling, the consent of all the parties to the dispute is required in every individual case. This reservation is equally applicable to the provisions contained in the said section which stipulate that the advisory opinion of the International Court is to be accepted as decisive."

3. Section 30 of the Convention, to which the above-quoted reservation is addressed, reads as follows :

> "All differences arising out of the interpretation or application of the present convention shall be referred to the International Court of Justice, unless in any case it is agreed by the parties to have recourse to another mode of settlement. If a difference arises between the United Nations on the one hand and a Member on the other hand, a request shall be made for an advisory opinion on any legal question involved in accordance with Article 96 of the Charter and Article 65 of the Statute of the Court. The opinion given by the Court shall be accepted as decisive by the parties."

4. It should first of all be noted that at present no dispute or difference appears as yet to have arisen between the United Nations and the Romanian Government, as the Organization has not yet formally invoked the Convention vis-à-vis the Government. However, it is foreseen in operative paragraph 2 of the draft resolution that this will be done.

5. The answer to question *(a)* is that the above-quoted reservation by Romania does not prevent a United Nations organ competent to do so from requesting an advisory opinion of the International Court of Justice concerning the applicability of Article VI, Section 22, of the General Convention to the situation of Mr. Mazilu, but that such a request would then not be made within the framework of Section 30 of the Convention but merely under the general authority of the organ in question to request advisory opinions from the Court pursuant to Article 96 of the United Nations Charter.

6. The answer to question *(b)* is that the legal implication or effect of the Romanian reservation is that any advisory opinion given by the International Court of Justice pursuant to Article 65 of its Statute in response to a request

of the kind mentioned in para. 5 made by a United Nations organ, would not have to be considered as decisive or binding by either the Romanian Government or by the United Nations.

(Signed) Carl-August FLEISCHHAUER.

13. Correspondence and Communications from 26 October 1988 to 6 January 1989

73. Note Verbale Dated 26 October 1988 from the Secretary-General of the United Nations to the Permanent Representative of Romania to the United Nations in New York

The Secretary-General of the United Nations presents his compliments to the Permanent Representative of Romania to the United Nations and has the honour of calling to the attention of His Excellency's Government resolution 1988/37 adopted by the Sub-Commission on Prevention of Discrimination and Protection of Minorities on 1 September 1988. A copy of the resolution is attached.

In that resolution the Sub-Commission referred to its appointment of Mr. Dumitru Mazilu, an expert from Romania, to prepare a report on Human Rights and Youth and the urgent need to have the said report presented to it by Mr. Mazilu as soon as possible. The resolution also stated that if Mr. Mazilu should be unable for whatever personal reasons to complete and present himself the said report to the Sub-Commission, he should be given any possible assistance by the United Nations enabling him to complete his report, with such assistance, in Romania. The Sub-Commission also referred to its decision of 15 August 1988 on the matter and to the response of His Excellency's Government transmitted to the Sub-Commission on 17 August 1988.

By operative paragraph 1 of the resolution, the Sub-Commission requested the Secretary-General to approach once more the Government of Romania and invoke the applicability of the Convention on the Privileges and Immunities of the United Nations, and request the Government to co-operate fully in the implementation of the resolution by ensuring that Mr. Mazilu's report be completed and presented to the Sub-Commission at the earliest possible date, either by himself or in the manner indicated in the resolution.

By operative paragraph 2, the Sub-Commission further requested the Secretary-General, in the event the Government of Romania did not concur in the applicability of the provisions of the said Convention in the present case, and thus with the terms of the resolution, to bring the differences between the United Nations and Romania immediately to the attention of the Commission on Human Rights at its forthcoming forty-fifth session in 1989.

The Secretary-General has the honour to refer in this connection to the legal opinion on this matter dated 23 August 1988 in which it is stated that Mr. Mazilu appears to have a valid assignment from the Sub-Commission, and when working, or attempting to work in that assignment, is, therefore, performing a task or mission for the United Nations. That legal opinion further stated that Mr. Mazilu should be considered an "expert on mission for the United Nations" within the meaning of Article VI of the Convention on the Privileges and Immunities of the United Nations, which entitled him, *inter alia*, under Section 22 to the "privileges and immunities . . . necessary for the independent exercise

of his functions" during the period of his assignment, including the time spent on journeys in connection with his mission, and that he was, in this connection, also to be accorded immunity from legal process even after completion of his assignment.

In light of the above the Secretary-General would appreciate it if His Excellency's Government would accord the necessary facilities to Mr. Dumitru Mazilu in order to enable him to complete his assigned task. In particular, the Secretary-General urges that Mr. Mazilu be enabled to establish personal contact with the Under-Secretary-General for Human Rights in order that the Centre for Human Rights might accord to Mr. Mazilu the assistance he requires.

The Secretary-General wishes to express his firm hope that the response of His Excellency's Government will enable him to report positively on this matter to the Commission on Human Rights at its forthcoming forty-fifth session.

26 October 1988.

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74. Letter Dated 19 December 1988 from the Under-Secretary-General for Human Rights to the Permanent Representative of Romania to the United Nations Office at Geneva

19 December 1988.

I am writing to you with regard to the report on human rights and youth which Professor Dumitru Mazilu was mandated to present to the Sub-Commission on Prevention of Discrimination and Protection of Minorities.

As you may know, the Secretary-General, pursuant to Sub-Commission resolution 1987/37, addressed a note verbale on 26 October 1988 to the Permanent Representative of Romania to the United Nations in which the Secretary-General requested the Government of Romania to make available the necessary facilities to enable Professor Mazilu to complete his report.

As we are now making preparations for the next session of the Sub-Commission, in particular concerning our assistance to Special Rapporteurs, it would be greatly appreciated if the Centre for Human Rights could discuss with Professor Mazilu the assistance which it might give him in preparing his report. I would be most grateful to you if you could assist in arranging for Professor Mazilu to visit Geneva early in the New Year.

As you know, this is a matter to which both the Sub-Commission and the Secretary-General attach high importance and an early reply from you would be most appreciated.

May I say that I share the Secretary-General's hope that the response of your Government will enable the Secretary-General to report positively on this matter to the Commission on Human Rights at its next session.

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75. Letter Dated 19 December 1988 from the Under-Secretary-General for Human Rights to Mr. Mazilu

19 December 1988.

Registered Mail

I am writing to you concerning our continuing efforts to enable you to prepare and present your report on human rights and youth to the Sub-Commission on Prevention of Discrimination and Protection of Minorities.

As you know this is a matter of great importance to us and we have on various occasions been in contact with the authorities of your country with a view to enabling you to come to Geneva to prepare your report.

Enclosed please find a copy of the report of the Sub-Commission on its fortieth session which has just recently been printed. In that report you will see that the question of your study on human rights and youth, which you are mandated to submit to the Sub-Commission, was discussed (paras. 11-19 and 416-430) and that decision 1988/102 and resolution 1988/37 were adopted in that regard. As you might know, a copy of your letter of 11 August 1988 addressed to the Chairman of the Sub-Commission and a copy of your letter dated 19 August 1988 addressed to me were distributed to members of the Sub-Commission, at the Chairman's request.

Pursuant to Sub-Commission resolution 1988/37 the Secretary-General addressed a note verbale on 26 October 1988 to the Permanent Representative of Romania to the United Nations requesting that the necessary facilities be made available to you in order to enable you to complete your report. Attached is a copy of that note verbale and of the legal opinion mentioned therein.

For my part, I have just addressed a letter to the Permanent Representative of Romania to the United Nations at Geneva asking for his assistance in arranging your visit to Geneva. A copy of that letter is attached for your information.

I wish to inform you that the parts of the first draft of the main ideas of your report, which you submitted in Romanian, have been translated into English and we would wish to discuss them with you as soon as possible. As this is an urgent matter it is our hope that you will be able to come to Geneva in the near future.

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76. Memorandum dated 19 December 1988 from the Under-Secretary-General for Human Rights to the Resident Representative, United Nations Development Programme, Bucharest[1]

77. Telex dated 3 February 1989 from the Resident Representative, United Nations Development Programme, Bucharest[1]

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78. Aide-Mémoire Delivered on 6 January 1989 to the Legal Counsel by the Permanent Representative of Romania

Translated from French

With respect to the situation of the former Romanian expert on the United Nations Sub-Commission on Prevention of Discrimination and Protection of Minorities, Mr. Dumitru Mazilu, *the facts are as follows:*

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[1] Document not reproduced. *[Note by the Registry.]*

1. In 1985, Mr. Dumitru Mazilu, as a member of the Sub-Commission, was appointed in his personal capacity to prepare a report on human rights and youth.

He was appointed Special Rapporteur by the Sub-Commission.

2. During 1985 and 1986, Mr. Mazilu neither prepared nor produced anything on the subject. It should be noted that neither the other members of the Sub-Commission nor the Centre for Human Rights attached any importance to this state of affairs.

In 1987, Mr. Mazilu became gravely ill with a serious heart condition and was hospitalized repeatedly over a period of several months.

In November 1987, he applied personally for disability retirement because of this condition and submitted the appropriate medical certificates.

In accordance with Romanian law, he was examined by a panel of doctors which decided to grant him retirement on grounds of ill-health for an initial period of one year.

3. Mr. Mazilu's term as a member of the Sub-Commission expired at the end of 1987.

For obvious reasons, the Romanian Government submitted the candidacy of another expert who could participate effectively in the Sub-Commission's work.

4. To the Government's surprise, at that point the United Nations Centre for Human Rights started to take a special interest in Mr. Mazilu's situation and in the report he had undertaken to prepare.

Even more surprisingly, only a matter of months after applying for and being granted retirement on the basis of the appropriate medical records which he himself had submitted, the former expert began to maintain that he was able to perform his task as Special Rapporteur and began to send a number of messages on the subject to Geneva, either directly or through intermediaries.

5. The Romanian authorities, acting responsibly and with due respect for the steps taken again and again by Mr. Mazilu's former colleagues on the Sub-Commission, therefore submitted his medical records to the Centre for Human Rights in February 1988.

6. The fact that certain individuals still questioned the explanations and documents provided by the Romanian authorities created and continues to create, doubts as to their real motives.

There is also a question of the honesty of the former expert, which the Romanian authorities cannot take lightly, especially since he was recently examined, at the end of the first year of his disability retirement, by a similar panel of doctors which decided to extend his retirement on grounds of ill-health.

The insistence on making a case out of the situation of someone who is ill and the attempts to involve him in a political campaign have nothing to do with any concern for obtaining a report for the Sub-Commission.

In respect of the *legal aspects of the problem:*

1. In view of the doctors' opinion that the former expert is incapacitated for mental work, which is why he applied for and was granted his retirement, he is in no position to prepare the report.

Accordingly, the Romanian authorities fail to see how they might "co-operate . . . by ensuring that Mr. Mazilu's report be completed and presented to the Sub-Commission at the earliest possible date", as mentioned in resolution 1988/37 adopted by the Sub-Commission on Prevention of Discrimination and Protection of Minorities on 1 September 1988, or "facilitate" that process as requested in the Secretary-General's note.

If the overriding concern is the preparation of a report, we would point out that the new Romanian expert on the Sub-Commission has offered to perform

the task himself and has even transmitted a draft report to the Centre for Human Rights in his own name.

2. The question of applying the 1946 Convention on the Privileges and Immunities of the United Nations, to which Romania is a party, does not arise in this case.

First of all, the Convention does not equate rapporteurs, whose activities are only occasional, with experts on mission for the United Nations.

Even if rapporteurs are given some of the status of experts, it is quite obvious that they can enjoy only functional immunities and privileges, that is, privileges connected with their activities for the United Nations, during the period of their mission, and then only in the countries in which they perform the mission and in countries of transit.

This is the only possible interpretation of Article VI, Section 22, of the Convention, which makes it unambiguously clear that experts are accorded privileges and immunities only while they are in the country to which they have been sent on mission and during the journey to or from that country.

It is therefore obvious from the provisions of the Convention that an expert does not enjoy privileges and immunities in the country in which he has his permanent residence but only in the country in which he is on mission and during the period of his mission. Likewise, the privileges and immunities provided by the Convention begin to apply only at the moment when the expert leaves on a journey connected with the performance of his mission. As long as he has not begun the journey, for reasons which are not connected with his activities, there are no legal grounds for claiming privileges and immunities under the Convention.

Moreover, in the country of which he is a national and in countries other than the country to which he is sent on mission, an expert enjoys privileges and immunities only in respect of actual activities spoken or written which he performs in connection with his mission.

Since that is the only correct textual interpretation of the Convention, there are no grounds for claiming that there is a dispute between the United Nations and Romania concerning the application or interpretation of the Convention.

3. As for the possible request for an advisory opinion from the International Court of Justice on the applicability of the Convention, a question to which the above-mentioned Sub-Commission resolution refers, it should be recalled that, in ratifying the 1946 Convention, Romania made a reservation to section 30 on the settlement of disputes to the effect that in order for a difference between the United Nations and a Member State to be the subject of an opinion of the Court, the express consent of all parties to the dispute must be given.

Romania states expressly that it is opposed to requesting any kind of opinion from the Court on this case.

In substance, even if a dispute did exist, there would be no legal basis for requesting an advisory opinion from the Court since one of the parties is opposed to referring the alleged difference to the Court.

Since the provisions of the 1946 Convention, including both those on questions of substance and those on the settlement of disputes to which Romania made the above-mentioned reservation form a whole, an advisory opinion could not be requested on this case, and hence on the interpretation of the Convention and its application to the case, on the basis of other arguments. That would be tantamount to sidestepping the provisions of the Convention, which must be applied to the Contracting State Party in the light of the reservations made by it at the time of ratification.

In conclusion, the efforts being made by certain individuals, for political or

personal reasons, to turn a case of illness into a political or legal issue are in complete contradiction with the purposes and principles of the Charter of the United Nations.

Romania therefore requests that this artificial case should be considered closed. For reasons of principle, the Romanian authorities cannot agree, in respect of a question of employment disability attested to by the person concerned and by the appropriate medical documents, to be placed in the situation of having to be guided not by the opinion of a panel of doctors but by opinions that are politically motivated.

If the problem of the report which Mr. Dumitru Mazilu was to have prepared is really urgent, the Sub-Commission could decide, pending his recovery, that the report should be prepared by the current Romanian expert on the Sub-Commission.

If, on the other hand, the intention of certain members of the Sub-Commission is to make it easier for Mr. Dumitru Mazilu to travel to Geneva, that is an entirely different question.

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14. Fifth (Administrative and Budgetary) Committee of the General Assembly, Forty-third Session (New York, 20 September-22 December 1988)

79. Report of the Secretary-General: Personnel questions: Respect for the privileges and immunities of officials of the United Nations and the specialized agencies and related organizations (para. 29)[1] — A/C.5/43/18

79A. Summary Record of the 35th meeting (held on Friday, 18 November 1988, at 10 a.m., New York) (paras. 45 and 62)[1] — A/C.5/43/SR.35

15. Commission on Human Rights: Forty-fifth Session (Geneva, 30 January-10 March 1989)

80. Report of Mr. M. C. Bhandare, Chairman of the Sub-Commission, at its fortieth session, prepared in accordance with paragraph 20 of Commission on Human Rights resolution 1988/43 (Section III, paras. 16-22)[1] — E/CN.4/1989/37

E/CN.4/1989/69
13 February 1989.

81. Note by the Secretary-General Pursuant to Paragraph 2 of Resolution 1988/37 of the Sub-Commission on Prevention of Discrimination and Protection of Minorities

1. The Commission on Human Rights in paragraph 4 of its resolution 1985/13 requested the Sub-Commission on Prevention of Discrimination and

[1] Document not reproduced. *[Note by the Registry.]*

Protection of Minorities to pay due attention to the role of youth in the field of human rights, particularly in achieving the objectives of the International Youth Year: Participation, Development, Peace, and taking into consideration the Specific Programme of Measures and Activities to be undertaken prior to and during the International Youth Year. The Sub-Commission at its thirty-eighth session, in resolution 1981/12, citing the Commission's request, requested Mr. Dumitru Mazilu, in order to facilitate the Sub-Commission's discussion of the topic, to prepare a report on human rights and youth analysing the efforts and measures for securing the implementation and enjoyment by youth of human rights, particularly the right to life, education and work. The Sub-Commission also requested the Secretary-General to provide all necessary assistance to Mr. Mazilu for the compilation of that task. In adopting that resolution the Sub-Commission had before it a statement of the administrative and programme budget implications of the draft resolution which included provision for one trip to Geneva for Mr. Mazilu for consultations.

2. The thirty-ninth session of the Sub-Commission, originally scheduled for August 1986, was deferred to 1987 pursuant to economy measures decided upon by the General Assembly. Those economy measures also resulted in a postponement of a planned visit to Geneva by Mr. Mazilu for consultations on his report.

3. Mr. Mazilu was elected a member of the Sub-Commission by the Commission on Human Rights on 13 March 1984. The three-year term of the members of the Sub-Commission, originally scheduled to expire on 31 December 1986, was extended for one year, by Economic and Social Council decision 1987/102, to ensure their participation in the thirty-ninth session of the Sub-Commission.

4. The Commission on Human Rights, in its resolution 1987/44, took note with appreciation of Sub-Commission resolution 1985/12 in which the Sub-Commission had requested one of its members to prepare a report on human rights and youth analysing the efforts and measures for securing the implementation and enjoyment of human rights by youth, particularly the right to life, education and work, and requested the Secretary-General to provide all necessary assistance to the Rapporteur of the Sub-Commission on human rights and youth for completion of that task.

5. The Sub-Commission's thirty-ninth session took place at Geneva from 10 August to 4 September 1987. Mr. Mazilu did not participate in that session nor did he submit his report on human rights and youth, with regard to his participation in the session, the Permanent Mission of Romania to the United Nations Office at Geneva informed the Secretariat that Mr. Mazilu had suffered a heart attack in June and was not able to travel to Geneva (see E/CN.4/Sub.2/1987/SR.5). The Sub-Commission, by its decision 1987/112, postponed to its fortieth session consideration of the agenda item under which the report of Mr. Mazilu was to be discussed. The Sub-Commission included Mr. Mazilu's report in the draft provisional agenda of its fortieth session which it adopted at the end of its thirty-ninth session E/CN.4/1988/37 — E/CN.4/Sub.2/1987/42, para. 412).

6. The Sub-Commission held its fortieth session from 8 August to 2 September 1988 and considered the question of the report entrusted to Mr. Mazilu at its 1st, 2nd, 5th, 7th, 9th to 11th, 14th, 23rd, 25th, 30th, 32nd and 36th meetings held on 8, 9, 11, 12, 15 to 17, 24, 25, 29 and 30 August and 1 September 1988. At the Sub-Commission's first meeting the Under-Secretary-General for Human Rights reviewed the steps taken to provide Mr. Mazilu with assistance in preparing his report, information received relating to that study had been periodically sent to Mr. Mazilu and he had been invited to Geneva for consultations regarding his study. The Under-Secretary-General also informed

the Sub-Commission of Mr. Mazilu's statements of his willingness to continue with his study and to travel to Geneva for consultations. However, in the light of the Government's reports of Mr. Mazilu's ill health, the Under-Secretary-General for Human Rights had decided to authorize, as an exceptional measure, a staff member of the Centre to travel to Mr. Mazilu's place of residence in order to work with him on his report. He had done so on the understanding that Mr. Mazilu would be enabled to come to Geneva during the session of the Sub-Commission to present his report. That had not been the case, but Mr. Mazilu had sent the first version of the main ideas of his study and the Secretariat had unsuccessfully sought to contact him to discuss various matters in that regard (E/CN.4/Sub.2/1988/SR.1). At the Sub-Commission's 7th meeting, the Observer for Romania informed the Sub-Commission that, because of his health condition, Mr. Mazilu was not able to travel, copies of medical certificates had been submitted to the Centre for Human Rights in that regard (E/CN.4/Sub.2/1988/SR.7).

7. In connection with this matter, the Sub-Commission, at its fortieth session, adopted decision 1988/102 and resolution 1988/37.

8. In resolution 1988/37, the Sub-Commission, *inter alia*, requested the Secretary-General to approach once more the Government of Romania and invoke the applicability of the Convention on the Privileges and Immunities of the United Nations, and request the Government to co-operate fully in the implementation of that resolution by ensuring that Mr. Mazilu's report was completed and presented to the Sub-Commission at the earliest possible date. The Sub-Commission further requested the Secretary-General, in the event that the Government of Romania did not concur in the applicability of the provisions of the said Convention to that case, to bring the difference between the United Nations and Romania immediately to the attention of the Commission at its forthcoming forty-fifth session.

9. Pursuant to that resolution the Secretary-General addressed a note verbale on 26 October 1988 to the Permanent Representative of Romania to the United Nations (see Annex I). On 6 January 1989, the Permanent Representative of Romania transmitted to the Legal Counsel an aide-mémoire on the subject asking that it be circulated to the Commission on Human Rights (see Annex II). The Legal Counsel made it clear that acceptance of the aide-mémoire for transmittal to the Commission on Human Rights did not mean that he accepted its contents.

10. Subsequent to the fortieth session of the Sub-Commission, the Secretariat has continued to collect information relating to Mr. Mazilu's study and sought unsuccessfully to establish contact with him to discuss matters relating to his report. The Under-Secretary-General for Human Rights has also maintained contact with the Permanent Representative of Romania to the United Nations Office at Geneva for the purpose of seeking the Government's assistance in this matter.

11. The Secretary-General, in his report to the Fifth Commission of the General Assembly at its forty-third session (A/C.5/43/18, para. 29), referred to this matter in the following terms:

> "The Secretary-General regrets to mention that Mr. Dumitru Mazilu, a former member of the Sub-Commission on Prevention of Discrimination and Protection of Minorities, who had been charged by the Sub-Commission, pursuant to its resolution 1985/12 of 29 August 1985, with the preparation of a report on the question of human rights and youth, was not permitted by the Romanian authorities to travel to Geneva in order to

present his report at the recent fortieth session of the Sub-Commission. Although no longer a member of the Sub-Commission, Mr. Mazilu had a valid assignment from the Sub-Commission and is, therefore, to be considered as having in that capacity the status of an expert on mission for the United Nations within the meaning of Article VI of the Convention on the Privileges and Immunities of the United Nations."

Annex I

NOTE VERBALE DATED 26 OCTOBER 1988 FROM THE SECRETARY-GENERAL ADDRESSED TO THE PERMANENT REPRESENTATIVE OF ROMANIA TO THE UNITED NATIONS

[See No. 73, p. 86, supra]

Annex II

AIDE-MÉMOIRE TRANSMITTED TO THE LEGAL COUNSEL ON 6 JANUARY 1989 BY THE PERMANENT REPRESENTATIVE OF ROMANIA TO THE UNITED NATIONS

[See No. 78, p. 88, supra]

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82. Summary Record of the 22nd meeting (held at the Palais des Nations, Geneva, on Tuesday, 14 February 1989, at 3 p.m.)[1]	E/CN.4/1989/SR.22
83. Summary Record of the 23rd meeting (held at the Palais des Nations, Geneva, on Wednesday, 15 February 1989, at 10 a.m.)[1]	E/CN.4/1989/SR.23
84. Summary Record of the first part of the 24th meeting (held at the Palais des Nations, Geneva, on Wednesday, 15 February 1989, at 3 p.m.)[1]	E/CN.4/1989/SR.24
85. Summary Record of the 38th meeting (held at the Palais des Nations, Geneva, February 1989)[1]	E/CN.4/1989/SR.38
86. Summary Record of the 39th meeting (held at the Palais des Nations, Geneva, on Monday, 27 February 1989, at 10 a.m.)[1]	E/CN.4/1989/SR.39

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[1] Document not reproduced. *[Note by the Registry.]*

E/CN.4/1989/SR.51/Add.1
31 July 1989.

87. Summary Record of the Second Part of the 51st Meeting

Held at the Palais des Nations, Geneva,
on Monday, 6 March 1989, at 3 p.m.

Chairman: Mr. Bossuyt (Belgium) (later: Mrs. Ilic (Yugoslavia))

[Paras. 1-110 not reproduced]

Draft resolution E/CN.4/1989/L.36: Status of special rapporteurs

111. *Mr. Hilger* (Federal Republic of Germany), introducing the draft resolution on behalf of the sponsors, recalled that at its two previous sessions the Sub-Commission had studied the case of Mr. Mazilu, the Sub-Commission expert entrusted with the task of preparing a report on human rights and youth. In resolution 1988/37, the Sub-Commission had expressed the opinion that Mr. Mazilu, in his continuing capacity of Special Rapporteur, enjoyed the privileges and immunities necessary for the performance of his duties, as provided for in Article VI, Section 22, of the Convention on the Privileges and Immunities of the United Nations of 13 February 1946, to which Romania was a party. In the draft under consideration, it was noted that the Romanian Government did not concur in the applicability of those provisions; consequently, the Commission recommended that the Economic and Social Council should request, pursuant to Article 96 (2) of the Charter of the United Nations and General Assembly resolution 89 (I) of 11 December 1946, an advisory opinion from the International Court of Justice on that question. He hoped the draft resolution could be adopted without a vote.

112. *Mrs. Raadi* (Secretariat) said that Luxembourg had become a sponsor.

113. *At the request of the representative of the German Democratic Republic, a vote was taken by roll-call on draft resolution E/CN.4/1989/L.36.*

114. *Japan, having been drawn by lot by the Chairman, was called upon to vote first.*

In favour: Argentina, Belgium, Brazil, Canada, Colombia, Cyprus, France, Gambia, Germany, Federal Republic of, India, Italy, Japan, Mexico, Nigeria, Panama, Peru, Philippines, Portugal, Sao Tome and Principe, Senegal, Spain, Swaziland, Sweden, United Kingdom of Great Britain and Northern Ireland, United States of America, Venezuela.

Against: Bulgaria, Cuba, German Democratic Republic, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics.

Abstaining: Bangladesh, Botswana, China, Ethiopia, Iraq, Morocco, Pakistan, Rwanda, Somalia, Sri Lanka, Togo, Yugoslavia.

115. *Draft resolution E/CN.4/1989/L.36 was adopted by 26 votes to 5, with 12 abstentions.*

[Paras. 116-148 not reproduced]

149. *Mr. Maxim* (Observer for Romania), speaking on resolution E/CN.4/1989/L.48, deeply regretted the fact that the resolution substituted an

artificial problem for a real one. The real problem was that of establishing a report on human rights and youth. He gave an assurance that Romania was prepared to continue contributing to that task. However, resolution E/CN.4/1989/L.48 distorted for political ends the situation created by the state of health of Mr. Mazilu, the Romanian expert entrusted with the study. Mr. Mazilu was seriously ill, and medical certificates submitted in that connection had not been contested. The Romanian authorities were unwilling to disregard medical advice.

150. Furthermore, in the memorandum they had submitted on the subject, the Romanian authorities had stressed that in their view the problem of privileges and immunities under the 1946 Convention did not arise, since a United Nations expert enjoyed such privileges only while on official mission, and not at all times in any country he might visit for reasons unconnected with that mission. The resolution also did not take into account the reservation made by Romania in respect of the Convention, namely that a request addressed to the International Court of Justice was admissible only with the agreement of the State concerned. His delegation therefore hoped that efforts would be focused more on the real objective, which was the establishment of the report on human rights and youth.

151. *The Chairman* indicated that the Commission had concluded its consideration of draft resolutions and decisions relating to agenda item 19.

[Paras. 152-211 not reproduced]

E/1989/20
E/CN.4/1989/86.

88. Report on the Forty-Fifth Session: Resolution 1989/37. Status of Special Rapporteurs, Adopted on 6 March 1989

The Commission on Human Rights,

Convinced that the impartiality and objectivity of the Sub-Commission on Prevention of Discrimination and Protection of Minorities and the independent status of its members, their alternates and its special rapporteurs must be safeguarded in all circumstances,

Recalling that the Sub-Commission, in 1985, appointed Dumitru Mazilu, an expert from Romania, to prepare a report on human rights and youth, and that his membership in the Sub-Commission expired before the study entrusted to him as Special Rapporteur had been completed,

Concurring with the view expressed by the Sub-Commission in its resolution 1988/37 of 1 September 1988 that Mr. Mazilu, in his continuing capacity as Special Rapporteur, enjoys the privileges and immunities necessary for the performance of his duties, as provided for in Article VI, Section 22, of the Convention on the Privileges and Immunities of the United Nations of 13 February 1946, to which Romania is a party,

Having considered the note dated 13 February 1989 (E/CN.4/1989/69) submitted by the Secretary-General pursuant to paragraph 2 of Sub-Commission resolution 1988/37 and in particular the aide-mémoire transmitted to the Legal

Counsel by the Permanent Representative of Romania to the United Nations, reproduced in Annex II thereof,

Noting that the Government of Romania does not concur in the applicability of the provisions of the Convention on the Privileges and Immunities of the United Nations in the case of Mr. Mazilu,

Recommends the following draft resolution to the Economic and Social Council for adoption:

[For the text, see Chap. I, Sec. A, draft resolution III.]

51st meeting
6 March 1989

[Adopted by a roll-call vote of 26 to 5, with 12 abstentions. See Chap. XIX.]

III. *Status of Special Rapporteurs*

The Economic and Social Council,

Having considered Sub-Commission on Prevention of Discrimination and Protection of Minorities resolution 1988/37 of 1 September 1988 and Commission on Human Rights resolution 1989/37 of 6 March 1989,

1. *Concludes* that a difference has arisen between the United Nations and Romania as to the applicability of the Convention on the Privileges and Immunities of the United Nations of 13 February 1946 to Mr. Dumitru Mazilu as Special Rapporteur of the Sub-Commission;

2. *Requests*, pursuant to Article 96, paragraph 2, of the Charter of the United Nations and in accordance with General Assembly resolution 89 (I) of 11 December 1946, an advisory opinion from the International Court of Justice on the legal question of the applicability of Article VI, Section 22, of the Convention on the Privileges and Immunities of the United Nations of 13 February 1946 in the case of Mr. Dumitru Mazilu as Special Rapporteur of the Sub-Commission on the Prevention of Discrimination and Protection of Minorities.

[See Chap. II, Sec. A, resolution 1989/37, and Chap. XIX.]

89. Report on the forty-fifth session: Chap. XIX. Report of the Sub-Commission on Prevention of Discrimination and Protection of Minorities on its fortieth session (paras. 503-506 and 523-526)[1] — E/1989/20, E/CN.4/1989/86

[1] Document not reproduced. *[Note by the Registry.]*

16. Correspondence and Communications during May 1989

90. Letter Dated 5 May 1989 from the Under-Secretary-General for Human Rights to the Permanent Representative of Romania to the United Nations Office at Geneva

5 May 1989.

I am writing to you in connection with resolution 1989/37 of the Commission on Human Rights, adopted on 6 March 1989, a copy of which is attached for your information. In this regard I wish to refer to the Secretary-General's note verbale of 26 October 1988 to the Permanent Representative of Romania to the United Nations and my letter of 19 December 1988 to you.

We are now in the process of making preparations for the next session of the Sub-Commission on Prevention of Discrimination and Protection of Minorities and, in particular, of preparing reports for that body. As you know, the Sub-Commission has included in its agenda for the coming session, a report by Professor Dumitru Mazilu on human rights and youth, and it is urgently necessary for us to enter into contact with him with regard to the preparation of that report. It is, therefore, our hope that your Government will facilitate our contacts with Professor Mazilu so that we may assist him in the preparation of his report. In particular, we would be most grateful for your assistance in enabling Professor Mazilu to visit Geneva this month in order to work on his report.

The successful preparation of the report by Professor Mazilu is a matter to which the Commission, the Sub-Commission, and the Secretary-General attach high importance, and an early reply from you would be most appreciated. It would be our hope that the Secretary-General would be able to inform the Economic and Social Council during its first regular session of 1989 of the visit to Geneva by Professor Mazilu and the progress made in establishing his report.

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91. Letter Dated 5 May 1989 from the Under-Secretary-General for Human Rights to Mr. Mazilu

Registered 5 May 1989.
Return receipt requested

I am writing to you concerning our continuing efforts to enable you to prepare and present your report on human rights and youth to the Sub-Commission on Prevention of Discrimination and Protection of Minorities. Attached you will find a copy of a letter I addressed to you on 19 December 1988 along with the enclosures mentioned therein. The Commission on Human Rights, at its forty-fifth session, adopted resolution 1989/37 dealing with your report and your status as a Special Rapporteur, and I enclose a copy of that resolution for your information. Also enclosed is a copy of my letter of today's date to the Permanent Representative of Romania to the United Nations Office in Geneva requesting that you be enabled to come to Geneva this month to prepare your report.

The United Nations Information Centre in Bucharest has the necessary authorization to provide you with a round-trip airline ticket Bucharest/Geneva/Bucharest for the above period.

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92. Letter Dated 5 May 1989 from Mr. Mazilu to the Secretary-General and to the Chairman of the Sub-Commission

Open Letter
5 May 1989.

1. You may know that since 5 May 1986 I am in captivity in my own country. You would admit that even one hour of detention it is a very long period of time. But 25,998 hours?

In last year I have received threatening letters with the following content: "Give up! Obey to them! or you will die!", signed by "The sons of revolution".

You will understand that to kill an UN Rapporteur on Human Rights it is possible especially when the leaders of a country have to their disposal a huge police machinery, but to kill the truth, to stop the fight for the noble cause of Human Rights it is not possible.

2. In spite of the repressive measures and police terror against me and my family, I have finished the first version of my Report.

Please do everything possible to determine my authorities to allow me to submit it to the UN competent bodies.

3. If my authorities will refuse again to release me, I am asking you to publish my Report (its separate part regarding the Romanian case).

In this way, the UN and the international public opinion will know better what is the real situation of Human Rights in my own country.

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93. Letter Dated May 1989 from Mr. Mazilu to the Under-Secretary-General for Human Rights

May 1989.

You may know that my situation is desperate.

I am in captivity, under an unprecedented police terror.

The life of my wife and my son are in danger.

Since 5 May 1986, when I have received first invitation to come to Geneva for consultations in order to prepare my Report, I have understood that in my country it is impossible to tell the truth about the existing situation of Human Rights.

Now, on the basis of a profound analysis, I have come to the conclusion that we have to do everything possible to submit this matter to the attention of the UN competent bodies and of the international public opinion.

Attached to this letter, you will find another one regarding the new texts of my Report, an open letter to the Secretary-General and to the Chairman of the Commission on Human Rights and an open letter to the President of the GA and to the Chairman of the Sub-Commission.

With a hope for a better future!

With the most sincere thanks for your invaluable help and continuous support.

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94. Letter Dated May 1989 from Mr. Mazilu to the Under-Secretary-General for Human Rights

May 1989.

I have the pleasure to send you now, the Introduction, a new Chapter IV (the actual Chapter IV it will be Chapter V), the Conclusions and Recommendations and Bibliography of my Report.

In the view of my unusual situation, I have analysed the fundamental causes of the disastrous status of Human Rights in my own country. You will find out the results of my research on this matter in a separate Report on Human Rights and Youth in Romania.

But, in order to cover all important areas of the matter involved, I desperately need consultations at your Centre for Human Rights.

In spite of my captivity and many repressive measures against me and against my family, I continue to wait and hope . . .

Your continuous help and support and the continuous help and support of my colleagues and friends from the Sub-Commission represent for me the hope to survive . . .

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95. Letter Dated May 1989 from Mr. Mazilu to the Secretary-General and the Chairman of the Sub-Commission

Open Letter
For immediate release!
May 1989.

In my capacity of the United Nations Special Rapporteur on Human Rights and Youth, I consider that it is my duty to declare publicly the following:

Taking into account the fact that the Romanian authorities have used every possible means and way to prevent me to prepare and to submit my Report in order to cover the truth about the existing situation in this field in my country, and having in mind the unspeakable repressive measures and police terror against me and against my family since August 1985, in order to determine me to lie and to abandon my research, and taking into account the notorious fact that the Romanian Government is refusing to co-operate with the United Nations in order to put end to my captivity and to allow me to finalize my Report and to submit it to the UN competent bodies, I am asking you to publish my Report, as soon as possible.

In this way, the international public opinion it will be informed on the Romanian tragic case.

As you know — because of my captivity and because of the fact that all my official correspondence from the UN has been confiscated by the Romanian secret police — I have been constrained to insist in the first version of my Report on the existing situation in Romania and, in particular, on the fundamental causes of the disastrous situation of Human Rights in this country.

It is my conviction that the publication of this version of my Report it would help the fight of Romanians and of the UN to put an immediate end to the barbarous violations of Human Rights in Romania.

Dear Mr. Secretary-General,
Dear Mr. Chairman,

During my research in different parts and regions of this country it became absolutely clear that the actual leaders of Romania deliberately defying all national and international rules regarding Human Rights and that they have total contempt for the human being.

On the basis of a thorough analysis, I have come to the conclusion that the Human Rights situation in this country is extremely grave and, in many respects, it is desperate.

I have to inform you that now, after 40 years since the Universal Declaration of Human Rights has been adopted and after 200 years from the French Revolution, the life, liberty and security of young people, of everyone in Romania, except for the most important political leaders, are in a big danger.

Even to speak about Human Rights in this country it is forbidden.

The fundamental causes of this incredible situation are continuous abuses of power, police terror, the total incompetence of Government, the wrong management of economy and the absence of democracy in all its forms.

As a father and professor I cannot remain silent, because my authorities are keeping me in captivity, when around me I see thousands and thousands of young people condemned to die of hunger and with cold, because the leaders of the country deliberately continue for years to refuse them the minimum food to survive, the necessary space heating and lighting in maternity wards, in schools and in their homes.

The chronic absence of the basic food : milk, butter, meat and even bread put in danger the biologic existence of the Romanian people. The foetus has nothing or almost nothing to eat. The mothers have no milk to suckle their babies, because of their malnutrition for many years. Their heart cannot enduring the existing atmosphere cold as ice in their homes, in hospitals, in factories and offices.

The chronic absence of medicine, of extremely important drugs for medical treatment has determined the increasing number of the stillbirth-rate and of infant mortality.

Contrary to all national and international legal and moral laws and regulations, it has begun the destruction of 8,000 villages — more than half of the villages of Romania —, the displacement of large populations from their traditional life, the arbitrary deprivation of over three million peasants of their own property and the elimination, in this way, of the last individual liberties.

It has begun a barbarous destruction of historic relics, religious temples, national monuments and even of the graveyards.

In spite of the continuous and strong protests of the Romanian citizens and of the civilized world, this unprecedented gross violation of Human Rights continues under perplexing look of million and million of people throughout the world.

Taking into account its profound human implications, on the basis of existing laws and regulations, this action it is comparable with a genocide.

Because of the forced assimilation of minorities, thousands and thousands of Hungarians, Germans and Jews are leaving the country.

The fundamental constitutional rights and freedoms have been suspended. After the large protest of workers in Brasov county in November 1987, it has been instituted, in fact, the state of siege.

The elementary rights of everyone to freedom of opinion and expression, the right of peaceful assembly and the right to freedom of association do not exist.

Who has different opinions and has the courage to express them is labelling and qualifying as a traitor and he is condemned for "treason" of the interests of socialism.

The Romanian people have to confront serious difficulties in the exercise of their right to freedom of thought, conscience and religion.

The leaders of the country have to their disposal a huge police machinery, which is used against the rights, freedoms and the interests of the people.

After the increasing number of the Romanian protests as a consequence of the letters of protest of six former party leaders and of some very known Romanian writers in March 1989 against the gross violations of Human Rights, in the country it has been instituted the state of a general police terror.

At the will of the secret police, anyone could be subject to arbitrary interference with his privacy, family, home, correspondence and telephone, could lose his job, could be thrown in jail, in psychiatric hospitals or could disappear for ever at any time.

Taking into account the gravity of the matter, I have recommended through my Report to the United Nations to use all the possibilities to their disposal to determine the Romanian officials to organize, as soon as possible, free elections under the UN supervision.

Having in mind the tragic situation of Human Rights in this country, I have recommended in my Report to the United Nations to ask the Romanian Government to abandon immediately its so-called plan of rural systematization; to put an immediate end to the repressive measures and police terror against population and to restore constitutional rights and to observe the provisions of the UN Charter and of the other international legal instruments, signed or ratified by Romania; to ask the Romanian Government to stop the food export, in order to guarantee to every member of society the minimum food to survive.

Taking into account the unimaginable repressive measures and police terror, the torture and other cruel, inhuman and degrading treatment and punishment used against the workers, who have protested in Brasov county in November 1987, I strongly recommend to the UN to investigate the causes of this grave situation and to find out who are guilty for such incredible violations of Human Rights.

Dear Mr. Secretary-General,
Dear Mr. Chairman,

In the view of the extreme urgency of the matter, please give your full consideration and general priority to the Romanian case.

Attached you will find the copy of my legal action against Mr. Tudor Postelnicu, the Minister of Internal Affairs and all other persons named by him because they are guilty for the gross violation of my and my family rights, and a letter through which I have protested against the unspeakable manœuvres by my authorities aiming at creating of a false impression that I am a sick man and I cannot prepare and submit my Report on Human Rights and Youth to the UN competent bodies.

96. Letter dated May 1989 from Mr. Mazilu to the President of the General Assembly and to the Chairman of the Sub-Commission [1]

17. The Economic and Social Council: First Regular Session of 1989 (New York, 2-26 May 1989)

97. Report of the Second (Social) Committee: Human rights questions [1] E/1989/88

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98. 16th Meeting: Unofficial Sound Transcript

Translated from Spanish

Draft resolution III

The President invited the Council to consider draft resolution III, entitled "Status of special rapporteurs", contained in Chapter I of document E/1989/20.

Mr. Tanasie (Observer for Romania) said his delegation had provided the necessary explanations in the appropriate forums and considered the efforts that had been made to transform a case of illness into a political and legal issue to be unacceptable and contrary to the purposes and principles of the Charter of the United Nations. Since the case involved incapacity for work, the Romanian authorities had heeded the opinion of a medical commission and considered that there were no legal grounds for requesting an advisory opinion from the International Court of Justice, as was done in the draft resolution.

In 1946, when the Convention on the Privileges and Immunities of the United Nations was adopted, Romania had formulated reservations concerning Section 29, relating to the settlement of disputes between the United Nations and a Member State, since in its view, the consent of all the parties concerned was necessary if such a dispute was to form the subject of an opinion by the Court. In the current case, the Romanian party did not agree that the alleged dispute should be referred to the Court. If the report that the former Romanian official was to have submitted was really urgent, the Sub-Commission could easily decide that the matter should be dealt with by the Romanian expert who was currently a member of that body.

Miss Byrne (United States of America) said that in her view the intent of draft resolution III was to seek a prompt opinion of the International Court of Justice on the applicability of Article VI, Section 22, of the Convention on the Privileges and Immunities of the United Nations. However, the resolution's current wording might not permit the Court to act expeditiously and a long period of time, even one full year, might elapse, before the Court was able to address the issue. Accordingly, the United States proposed a technical amendment, namely, the insertion of the words "on a priority basis" after the word "*Requests*". Before submitting the amendment, her delegation had consulted the delegation

[1] Document not reproduced. *[Note by the Registry.]*

of the Federal Republic of Germany, which had taken a strong interest in the topic. The amendment was essentially procedural and served only to make the resolution's intent clearer; it did not change the substance of the text, and she therefore hoped that the amendment could be adopted by general agreement and that the Council would thereafter take action on the draft resolution.

The President said that, in accordance with rule 66 of the Council's rules of procedure, a vote would first be taken on the amendment proposed by the United States.

Miss Byrne (United States of America) said that her intention had been that the amendment should be adopted by consensus.

Mr. Mikulka (Czechoslovakia) said that the Council was not empowered to give the Court guidelines with regard to priorities when it did not know what other questions the Court had before it and he would therefore prefer that the amendment be put to the vote.

Mr. Golemanov (Bulgaria) endorsed the view expressed by the delegation of Czechoslovakia.

A recorded vote was taken on the amendment proposed by the United States.

In favour: Canada, Denmark, France, Germany, Federal Rupublic of, Greece, Ireland, Italy, Japan, Kenya, Netherlands, New Zealand, Norway, Portugal, United Kingdom of Great Britain and Northern Ireland, United States of America, Uruguay, Venezuela.

Against: Bulgaria, Cuba, Czechoslovakia, Iran (Islamic Republic of), Libyan Arab Jamahiriya, Nicaragua, Poland, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics.

Abstaining: Belize, Bolivia, Brazil, Cameroon, China, Colombia, Ghana, Guinea, Indonesia, Iraq, Jordan, Lesotho, Liberia, Niger, Oman, Rwanda, Sri Lanka, Sudan, Tunisia, Yugoslavia, Zaire, Zambia.

The amendment to operative paragraph 2 of draft resolution III was adopted by 17 votes to 9, with 22 abstentions.

A recorded vote was taken on draft resolution III as amended.

In favour: Bahamas, Belize, Bolivia, Brazil, Canada, Colombia, Denmark, France, Germany, Federal Republic of, Greece, Ireland, Italy, Japan, Kenya, Netherlands, New Zealand, Norway, Portugal, Trinidad and Tobago, United Kingdom of Great Britain and Northern Ireland, United States of America, Uruguay, Venezuela, Yugoslavia.

Against: Bulgaria, Cuba, Czechoslovakia, Iran (Islamic Republic of), Libyan Arab Jamahiriya, Poland, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics.

Abstaining: Cameroon, China, Ghana, Guinea, Indonesia, Iraq, Jordan, Lesotho, Liberia, Nicaragua, Niger, Oman, Rwanda, Sri Lanka, Sudan, Thailand, Tunisia, Zaire, Zambia.

Draft resolution III, as amended, was adopted by 24 votes to 8, with 19 abstentions.

99. Resolution 1989/75. Status of Special Rapporteurs, Adopted on 24 May 1989

[See pp. 4-5, supra]

Part II. Materials Relating to the Convention on the Privileges and Immunities of the United Nations

1. Report of the Preparatory Commission of the United Nations, 1946

100. Chap. VII, Sec. 1. Recommendations concerning Privileges and Immunities, Appendix B: Draft Convention on Privileges and Immunities[1]

2. General Assembly: First Part of the First Session, Sixth Committee (11 January-8 February 1946, London)

101. Summary Record of the Sixth (Legal) Committee, sixth meeting, held on 24 January 1946, Annex 3 thereto: First report of the Sub-Committee on Privileges and Immunities[1] A/C.6/17

102. Summary Record of the Sixth (Legal) Committee, seventh meeting, held on 28 January 1946, item 11, Privileges and Immunities: First report of the Sub-Committee (A/C.6/17)[1] A/C.6/19

103. Summary Record of the Sixth (Legal) Committee, eleventh meeting, held on 7 February 1946, item 22, Privileges and Immunities: Report of the Sub-Committee (A/C.6/31); Draft Recommendation and Convention on the Privileges and Immunities of the United Nations (A/C.6/28)[1] A/C.6/37

3. General Assembly: First Part of the First Session: Verbatim Records of Plenary Meetings

104. Thirty-first meeting held on 13 February 1946, item 68, Privileges and Immunities of the United Nations: Report of the Sixth Committee: Resolutions (A/43)[1]

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[1] Document not reproduced. *[Note by the Registry.]*

105. Thirty-first meeting held on 13 February 1946, Annex 22 thereto: Privileges and Immunities of the United Nations: Report of the Sixth Committee to the General Assembly (A/43/Rev.1)[1]

4. Other Materials

106. General Assembly Resolution 22 A (I), Adopted on 13 February 1946

XIII. Resolutions Adopted on the Reports of the Sixth Committee

6. Privileges and Immunities of the United Nations

A

Resolution relating to the adoption of the General Convention on privileges and immunities of the United Nations, and text of the convention.

The General Assembly approves the annexed convention on the privileges and immunities of the United Nations and proposes it for accession by each Member of the United Nations.

Thirty-first plenary meeting, 13 February 1946.

Convention on the Privileges and Immunities of the United Nations

Whereas Article 104 of the Charter of the United Nations provides that the Organization shall enjoy in the territory of each of its members such legal capacity as may be necessary for the exercise of its functions and the fulfilment of its purposes and

Whereas Article 105 of the Charter of the United Nations provides that the organization shall enjoy in the territory of each of its Members such privileges and immunities as are necessary for the fulfilment of its purposes and that representatives of the members of the United Nations and officials of the Organization shall similarly enjoy such privileges and immunities as are necessary for the independent exercise of the functions in connection with the Organization:

Consequently the General Assembly by a resolution adopted on 13 February 1946 approved the following convention and proposes it for accession by each Member of the United Nations.

Article I

Juridical Personality

Section 1. The United Nations shall possess juridical personality. It shall have the capacity:

(a) to contract;
(b) to acquire and dispose of immovable and movable property;
(c) to institute legal proceedings.

[1] Document not reproduced. *[Note by the Registry.]*

ARTICLE II

Property, Funds and Assets

Section 2. The United Nations, its property and assets wherever located and by whomsoever held, shall enjoy immunity from every form of legal process except in so far as in any particular case it has expressly waived its immunity. It is, however, understood that no waiver of immunity shall extend to any measure of execution.

Section 3. The premises of the United Nations shall be inviolable. The property and assets of the United Nations, wherever located and by whomsoever held, shall be immune from search, requisition, confiscation, expropriation and any other form of interference, whether by executive, administrative, judicial or legislative action.

Section 4. The archives of the United Nations, and in general all documents belonging to it or held by it, shall be inviolable wherever located.

Section 5. Without being restricted by financial controls, regulations or moratoria of any kind,

(a) The United Nations may hold funds, gold or currency of any kind and operate accounts in any currency;
(b) The United Nations shall be free to transfer its funds, gold or currency from one country to another or within any country and to convert any currency held by it into any other currency.

Section 6. In exercising its rights under Section 5 above, the United Nations shall pay due regard to any representations made by the Government of any Member in so far as it is considered that effect can be given to such representations without detriment to the interests of the United Nations.

Section 7. The United Nations, its assets, income and other property shall be:

(a) exempt from all direct taxes; it is understood, however, that the United Nations will not claim exemption from taxes which are, in fact, no more than charges for public utility services;
(b) exempt from customs duties and prohibitions and restrictions on imports and exports in respect of articles imported or exported by the United Nations for its official use. It is understood, however, that articles imported under such exemption will not be sold in the country into which they were imported except under conditions agreed with the Government of that country;
(c) exempt from customs duties and prohibitions and restrictions on imports and exports in respect of its publications.

Section 8. While the United Nations will not, as a general rule, claim exemption from excise duties and from taxes on the sale of movable and immovable property which form part of the price to be paid, nevertheless, when the United Nations is making important purchases for official use of property on which such duties and taxes have been charged or are chargeable, Members will, whenever possible, make appropriate administrative arrangements for the remission or return of the amount of duty or tax.

ARTICLE III

Facilities in Respect of Communications

Section 9. The United Nations shall enjoy in the territory of each member for its official communications treatment not less favourable than that accorded by

the Government of that Member to any other Government, including its diplomatic mission, in the matter of priorities, rates and taxes on mails, cables, telegrams, radiograms, telephotos, telephone and other communications; and press rates for information to the press and radio. No censorship shall be applied to the official correspondence and other official communications of the United Nations.

Section 10. The United Nations shall have the right to use codes and to dispatch and receive its correspondence by courier or in bags, which shall have the same immunities and privileges as diplomatic couriers and bags.

ARTICLE IV

The Representatives of Members

Section 11. Representatives of Members to the principal and subsidiary organs of the United Nations and to conferences convened by the United Nations, shall, while exercising their functions and during their journey to and from the place of meeting, enjoy the following privileges and immunities:

(a) immunity from personal arrest or detention and from seizure of their personal baggage, and, in respect of words spoken or written and all acts done by them in their capacity as representatives, immunity from legal process of every kind;
(b) inviolability for all papers and documents;
(c) the right to use codes and to receive papers or correspondence by courier or in sealed bags;
(d) exemption in respect of themselves and their spouses from immigration restrictions, aliens registration or national service obligations in the State they are visiting or through which they are passing in the exercise of their functions;
(e) the same facilities in respect of currency or exchange restrictions as are accorded to representatives of foreign governments on temporary official missions;
(f) the same immunities and facilities in respect of their personal baggage as are accorded to diplomatic envoys, and also;
(g) such other privileges, immunities and facilities, not inconsistent with the foregoing, as diplomatic envoys enjoy, except that they shall have no right to claim exemption from customs duties on goods imported (otherwise than as part of their personal baggage) or from excise duties or sales taxes.

Section 12. In order to secure for the representatives of Members to the principal and subsidiary organs of the United Nations and to conferences convened by the United Nations, complete freedom of speech and independence in the discharge of their duties, the immunity from legal process in respect of words spoken or written and all acts done by them in discharging their duties shall continue to be accorded, notwithstanding that the persons concerned are no longer the representatives of Members.

Section 13. Where the incidence of any form of taxation depends upon residence, periods during which the representatives of Members to the principal and subsidiary organs of the United Nations and to conferences convened by the United Nations are present in a State for the discharge of their duties shall not be considered as periods of residence.

Section 14. Privileges and immunities are accorded to the representatives of Members not for the personal benefit of the individuals themselves, but in order

to safeguard the independent exercise of their functions in connection with the United Nations. Consequently a Member not only has the right but is under a duty to waive the immunity of its representative in any case where in the opinion of the Member the immunity would impede the course of justice, and it can be waived without prejudice to the purpose for which the immunity is accorded.

Section 15. The provisions of Sections 11, 12 and 13 are not applicable as between a representative and the authorities of the State of which he is a national or of which he is or has been the representative.

Section 16. In this article the expression "representatives" shall be deemed to include all delegates, deputy delegates, advisers, technical experts and secretaries of delegations.

ARTICLE V

Officials

Section 17. The Secretary-General will specify the categories of officials to which the provisions of this Article and Article VII shall apply. He shall submit these categories to the General Assembly. Thereafter these categories shall be communicated to the Governments of all Members. The names of the officials included in these categories shall from time to time be made known to the Governments of Members.

Section 18. Officials of the United Nations shall:

(a) be immune from legal process in respect of words spoken or written and all acts performed by them in their official capacity;
(b) be exempt from taxation on the salaries and emoluments paid to them by the United Nations;
(c) be immune from national service obligations;
(d) be immune, together with their spouses and relatives dependent on them, from immigration restrictions and alien registration;
(e) be accorded the same privileges in respect of exchange facilities as are accorded to the officials of comparable ranks forming part of diplomatic missions to the government concerned;
(f) be given together with their spouses and relatives dependent on them, the same repatriation facilities in time of international crisis as diplomatic envoys;
(g) have the right to import free of duty their furniture and effects at the time of first taking up their post in the country in question.

Section 19. In addition to the immunities and privileges specified in Section 18, the Secretary-General and all Assistant Secretaries-General shall be accorded in respect of themselves, their spouses and minor children, the privileges and immunities, exemptions and facilities accorded to diplomatic envoys, in accordance with international law.

Section 20. Privileges and immunities are granted to officials in the interests of the United Nations and not for the personal benefit of the individuals themselves. The Secretary-General shall have the right and the duty to waive immunity of any official in any case where, in his opinion, the immunity would impede the course of justice and can be waived without prejudice to the interests of the United Nations. In the case of the Secretary-General, the Security Council shall have the right to waive immunity.

Section 21. The United Nations shall co-operate at all times with the ap-

propriate authorities of Members to facilitate the proper administration of justice, secure the observance of police regulations, and prevent the occurrence of any abuse in connection with the privileges, immunities and facilities mentioned in this Article.

ARTICLE VI

Experts on Missions for the United Nations

Section 22. Experts (other than officials coming within the scope of Article V) performing missions for the United Nations shall be accorded such privileges and immunities as are necessary for the independent exercise of their functions during the period of their missions, including the time spent on journeys in connection with their missions. In particular they shall be accorded:

(a) immunity from personal arrest or detention and from seizure of their personal baggage;
(b) in respect of words spoken or written and acts done by them in the course of the performance of their mission, immunity from legal process of every kind. This immunity from legal process shall continue to be accorded notwithstanding that the persons concerned are no longer employed on missions for the United Nations;
(c) inviolability for all papers and documents;
(d) for the purpose of their communications with the United Nations, the right to use codes and to receive papers or correspondence by courier or in sealed bags;
(e) the same facilities in respect of currency or exchange restrictions as are accorded to representatives of foreign governments on temporary official missions;
(f) the same immunities and facilities in respect of their personal baggage as are accorded to diplomatic envoys.

Section 23. Privileges and immunities are granted to experts in the interests of the United Nations and not for the personal benefit of the individuals themselves. The Secretary-General shall have the right and the duty to waive the immunity of any expert in any case where, in his opinion, the immunity would impede the course of justice and it can be waived without prejudice to the interests of the United Nations.

ARTICLE VII

United Nations Laissez-Passer

Section 24. The United Nations may issue United Nations *laissez-passer* to its officials. These *laissez-passer* shall be recognized and accepted as valid travel documents, by the authorities of Members, taking into account the provisions of Section 25.

Section 25. Applications for visas (where required) from the holders of United Nations *laissez-passer*, when accompanied by a certificate that they are travelling on the business of the United Nations, shall be dealt with as speedily as possible. In addition, such persons shall be granted facilities for speedy travel.

Section 26. Similar facilities to those specified in Section 25 shall be accorded to experts and other persons who, though not the holders of United Nations *laissez-passer*, have a certificate that they are travelling on the business of the United Nations.

Section 27. The Secretary-General, Assistant Secretaries-General and Directors travelling on United Nations *laissez-passer* on the business of the United Nations shall be granted the same facilities as are accorded to diplomatic envoys.

Section 28. The provisions of this article may be aplied to the comparable officials of specialized agencies if the agreements for relationship made under Article 63 of the Charter so provide.

ARTICLE VIII

Settlement of Disputes

Section 29. The United Nations shall make provisions for appropriate modes of settlement of:

(a) disputes arising out of contracts or other disputes of a private law character, to which the United Nations is a party;
(b) disputes involving any official of the United Nations who by reason of his official position enjoys immunity, if immunity has not been waived by the Secretary-General.

Section 30. All differences arising out of the interpretation or application of the present convention shall be referred to the International Court of Justice, unless in any case it is agreed by the parties to have recourse to another mode of settlement. If a difference arises between the United Nations on the one hand and a Member on the other hand, a request shall be made for an advisory opinion on any legal question involved in accordance with Article 96 of the Charter and Article 65 of the Statute of the Court. The opinion given by the Court shall be accepted as decisive by the parties.

FINAL ARTICLE

Section 31. This convention is submitted to every Member of the United Nations for accession.

Section 32. Accession shall be effected by deposit of an instrument with the Secretary-General of the United Nations and the convention shall come into force as regards each Member on the date of deposit of each instrument of accession.

Section 33. The Secretary-General shall inform all Members of the United Nations of the deposit of each accession.

Section 34. It is understood that, when an instrument of accession is deposited on behalf of any Member, the Member will be in a position under its own law to give effect to the terms of this convention.

Section 35. This convention shall continue in force as between the United Nations and every Member which has deposited an instrument of accession for so long as that Member remains a Member of the United Nations, or until a revised general convention has been approved by the General Assembly and that Member has become a party to this revised convention.

Section 36. The Secretary-General may conclude with any Member or Members supplementary agreements adjusting the provisions of this convention

so far as that Member or those Members are concerned. These supplementary agreements shall in each case be subject to the approval of the General Assembly.

[B, C, D, E and F not reproduced]

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107. Accession, Succession and Reservations to the Convention on Privileges and Immunities of the United Nations, 1946

(*Multilateral Treaties Deposited with the Secretary-General, Status as at 31 December 1988*, ST/LEG/SER.E/7, Chap. III.1.)

CHAPTER III. PRIVILEGES AND IMMUNITIES, DIPLOMATIC AND CONSULAR RELATIONS, ETC.

1. CONVENTION ON THE PRIVILEGES AND IMMUNITIES OF THE UNITED NATIONS

Adopted by the General Assembly of the United Nations on 13 February 1946[1]

ENTRY INTO FORCE: For each State, on the date of deposit of its instrument of accession, in accordance with Section 32.
REGISTRATION: 14 December 1946, No. 4.
TEXT: United Nations, *Treaty Series*, Vol. 1, p. 15, and Vol. 90, p. 327 (corrigendum to Vol. 1).

Participant	*Accession, succession* (d)
Afghanistan	5 Sep. 1947
Albania	2 July 1957
Algeria	31 Oct. 1963
Antigua and Barbuda	25 Oct. 1988[d]
Argentina	12 Oct. 1956
Australia	2 Mar. 1949
Austria	10 May 1957
Bahamas	17 Mar. 1977[d]
Bangladesh	13 Jan. 1978[d]
Barbados	10 Jan. 1972[d]
Belgium	25 Sep. 1948
Bolivia	23 Dec. 1949
Brazil	15 Dec. 1949
Bulgaria	30 Sep. 1960
Burkina Faso	27 Apr. 1962
Burma	25 Jan. 1955
Burundi	17 Mar. 1971
Byelorussian SSR	22 Oct. 1953
Cameroon	20 Oct. 1961[d]
Canada	22 Jan. 1948
Central African Republic	4 Sep. 1962[d]
Chile	15 Oct. 1948

China . . . . . 11 Sep. 1979
Colombia . . . . . 6 Aug. 1974
Congo . . . . . 15 Oct. 1962[d]
Costa Rica . . . . . 26 Oct. 1949
Côte d'Ivoire . . . . . 8 Dec. 1961[d]
Cuba . . . . . 9 Sep. 1959
Cyprus . . . . . 5 Nov. 1963[d]
Czechoslovakia . . . . . 7 Sep. 1955
Democratic Kampuchea . . . . . 6 Nov. 1963
Denmark . . . . . 10 June 1948
Djibouti . . . . . 6 Apr. 1978[d]
Dominica . . . . . 24 Nov. 1987[d]
Dominican Republic . . . . . 7 Mar. 1947
Ecuador . . . . . 22 Mar. 1956
Egypt . . . . . 17 Sep. 1948
El Salvador . . . . . 9 July 1947
Ethiopia . . . . . 22 July 1947
Fiji . . . . . 21 June 1971[d]
Finland . . . . . 31 July 1958
France . . . . . 18 Aug. 1947
Gabon . . . . . 13 Mar. 1964
Gambia . . . . . 1 Aug. 1966[d]
German Democratic Republic . . . . . 4 Oct. 1974
Germany, Federal Republic of[2] . . . . . 5 Nov. 1980
Ghana . . . . . 5 Aug. 1958
Greece . . . . . 29 Dec. 1947
Guatemala . . . . . 7 July 1947
Guinea . . . . . 10 Jan. 1968
Guyana . . . . . 28 Dec. 1972
Haiti . . . . . 6 Aug. 1947
Honduras . . . . . 16 May 1947
Hungary . . . . . 30 July 1956
Iceland . . . . . 10 Mar. 1948
India . . . . . 13 May 1948
Indonesia . . . . . 8 Mar. 1972
Iran (Islamic Republic of) . . . . . 8 May 1947
Iraq . . . . . 15 Sep. 1949
Ireland . . . . . 10 May 1967
Israel . . . . . 21 Sep. 1949
Italy . . . . . 3 Feb. 1958
Jamaica . . . . . 9 Sep. 1963
Japan . . . . . 18 Apr. 1963
Jordan . . . . . 3 Jan. 1958
Kenya . . . . . 1 July 1965
Kuwait . . . . . 13 Dec. 1963
Lao People's Democratic Republic . . . . . 24 Nov. 1956
Lebanon . . . . . 10 Mar. 1949
Lesotho . . . . . 26 Nov. 1969
Liberia . . . . . 14 Mar. 1947
Libyan Arab Jamahiriya . . . . . 28 Nov. 1958
Luxembourg . . . . . 14 Feb. 1949
Madagascar . . . . . 23 May 1962[d]
Malawi . . . . . 17 May 1966

Malaysia	28 Oct. 1957[d]
Mali	28 Mar. 1968
Malta	27 June 1968[d]
Mauritius	18 July 1969[d]
Mexico	26 Nov. 1962
Mongolia	31 May 1962
Morocco	18 Mar. 1957
Nepal	28 Sep. 1965
Netherlands	19 Apr. 1948
New Zealand[1]	10 Dec. 1947
Nicaragua	29 Nov. 1947
Niger	25 Aug. 1961[d]
Nigeria	26 June 1961[d]
Norway	18 Aug. 1947
Pakistan	22 Sep. 1948
Panama	27 May 1947
Papua New Guinea	4 Dec. 1975[d]
Paraguay	2 Oct. 1953
Peru	24 July 1963
Philippines	28 Oct. 1947
Poland	8 Jan. 1948
Romania	5 July 1956
Rwanda	15 Apr. 1964
Saint Lucia	27 Aug. 1986[d]
Senegal	27 May 1963[d]
Seychelles	26 Aug. 1980
Sierra Leone	13 Mar. 1962[d]
Singapore	18 Mar. 1966[d]
Somalia	9 July 1963
Spain	31 July 1974
Sudan	21 Mar. 1977
Sweden	28 Aug. 1947
Syrian Arab Republic	29 Sep. 1953
Thailand	30 Mar. 1956
Togo	27 Feb. 1962[d]
Trinidad and Tobago	19 Oct. 1965
Tunisia	7 May 1957
Turkey	22 Aug. 1950
Ukrainian SSR	20 Nov. 1953
Viet Nam	6 Apr. 1988
Union of Soviet Socialist Republics	22 Sep. 1953
United Kingdom	17 Sep. 1946
United Republic of Tanzania	29 Oct. 1962
United States of America	29 Apr. 1970
Uruguay	16 Feb. 1984
Yemen	23 July 1963
Yugoslavia	30 June 1950
Zaire	8 Dec. 1964
Zambia	16 June 1975[d]

Declarations and Reservations

(Unless otherwise indicated, the declarations and reservations were made upon accession or succession.)

ALBANIA [4]

The People's Republic of Albania does not consider itself bound by the provisions of Section 30, which provide that any difference arising out of the interpretation or application of the present Convention shall be brought before the International Court of Justice, whose opinion shall be accepted as decisive by the parties ; with respect to the competence of the Court in disputes relating to the interpretation or application of the Convention, the People's Republic of Albania will continue to maintain, as it has heretofore, that in every individual case the agreement of all the parties to the dispute is required in order that the dispute may be laid before the International Court of Justice for a ruling.

ALGERIA [4]

The Democratic and Popular Republic of Algeria does not consider itself bound by Section 30 of the said Convention which provides for the compulsory jurisdiction of the International Court of Justice in the case of differences arising out of the interpretation or application of the Convention. It declares that, for the submission of a particular dispute to the International Court of Justice for settlement, the consent of all parties to the dispute is necessary in each case.

This reservation also applies to the provision of the same section that the advisory opinion given by the International Court of Justice shall be accepted as decisive.

BULGARIA [4]

The People's Republic of Bulgaria does not consider itself bound by the provision of Section 30 of the Convention which provides for the compulsory jurisdiction of the International Court of Justice, and, with respect to the competence of the International Court in the case of differences arising out of the interpretation or application of the Convention, the position of the People's Republic of Bulgaria is that, for the submission of a particular dispute to the International Court for settlement, the consent of all parties to the dispute is necessary in each case. This reservation also applies to the provision of the same section that the advisory opinion given by the International Court shall be accepted as decisive.

BYELORUSSIAN SOVIET SOCIALIST REPUBLIC [4]

The Byelorussian Soviet Socialist Republic does not consider itself bound by the provision of Section 30 of the Convention which envisages the compulsory jurisdiction of the International Court and, in regard to the competence of the International Court in differences arising out of the interpretation and application of the Convention, the Byelorussian Soviet Socialist Republic will, as hitherto, adhere to the position that, for the submission of a particular dispute for settlement by the International Court, the consent of all the parties to the dispute is required in every individual case. This reservation is equally applicable to the provision contained in the same section, whereby the advisory opinion of the International Court shall be accepted as decisive.

CANADA

"With the reservation that exemption from taxation imposed by any law in Canada on salaries and emoluments shall not extend to a Canadian citizen residing or ordinarily resident in Canada."

CHINA[4]

The Government of the People's Republic of China has reservations on Section 30, Article VIII, of the Convention.

CZECHOSLOVAKIA[4]

". . . The Czechoslovak Republic does not consider itself bound by Section 30 of the Convention which envisages the compulsory jurisdiction of the International Court in differences arising out of the interpretation or application of the Convention; in regard to the competence of the International Court in such differences, the Czechoslovak Republic adheres to the position that, for the submission of a particular dispute for settlement by the International Court, the consent of all parties to the dispute is required in every individual case. This reservation is equally applicable to the further provisions contained in the same section, whereby the advisory opinion of the International Court shall be accepted as decisive."

GERMAN DEMOCRATIC REPUBLIC[4]

The German Democratic Republic does not consider itself bound by the provision of Section 30 of the Convention, which provides for the compulsory jurisdiction of the International Court of Justice, and, with regard to the competence of the International Court of Justice for disputes concerning the interpretation or application of the Convention, takes the view that in every single case the consent of all parties to the dispute shall be necessary to refer a particular dispute to the International Court of Justice for decision.

This reservation applies equally to the provision contained in this section according to which the advisory opinion of the International Court of Justice shall be accepted as decisive.

HUNGARY[4]

The Presidential Council of the Hungarian People's Republic expressly reserves its position with regard to Section 30 of the Convention, since, in its opinion, the jurisdiction of the International Court of Justice can be founded only on the voluntary prior acceptance of such jurisdiction by all the parties concerned.

INDONESIA

"Article I *(b)*, Section 1: The capacity of the United Nations to acquire and dispose of immovable property shall be exercised with due regard to national laws and regulations.

Article VII, Section 30:[4] With regard to competence of the International Court of Justice in disputes concerning the interpretation or application of the Convention, the Government of Indonesia reserves the right to maintain that in

every individual case the agreement of the parties to the dispute is required before the Court for a ruling."

LAO PEOPLE'S DEMOCRATIC REPUBLIC

1. Laotian nationals domiciled or habitually resident in Laos shall not enjoy exemption from the taxation payable in Laos on salaries and income.

2. Laotian nationals who are officials of the United Nations shall not be immune from National Service obligations.

MEXICO

(a) The United Nations and its organs shall not be entitled to acquire immovable property in Mexican territory, in view of the property regulations laid down by the Political Constitution of the United Mexican States.

(b) Officials and experts of the United Nations and its organs who are of Mexican nationality shall enjoy, in the exercise of their functions in Mexican territory, exclusively those privileges which are granted them by Section 18, paragraphs *(a)*, *(d)*, *(f)* and *(g)*, and by Section 22, paragraphs *(a)*, *(b)*, *(c)*, *(d)* and *(f)* respectively of the Convention on the Privileges and Immunities of the United Nations, on the understanding that the inviolability established in the aforesaid Section 22, paragraph *(c)*, shall be granted only for official papers and documents.

MONGOLIA[4]

". . . The Mongolian People's Republic does not consider itself bound by the provisions of Section 30 of the said General Convention, which provide that any difference arising out of the interpretation or application of the present Convention shall be referred to the International Court of Justice; and in such a case the position of the Mongolian People's Republic is that, for submission of a particular dispute to the International Court for settlement, the consent of all the parties to the dispute is necessary in every case.

This reservation is equally applicable to the provision that the advisory opinion given by the International Court of Justice shall be accepted as decisive."

NEPAL

"Subject to the reservation with regard to Section 18 *(c)* of the Convention, that United Nations officials of Nepalese nationality shall not be exempt from service obligations applicable to them pursuant to Nepalese law; and

Subject to the reservation[4] with regard to Section 30 of the Convention that any difference arising out of the interpretation or application of the Convention to which Nepal is a party, shall be referred to the International Court of Justice only with the specific agreement of His Majesty's Government of Nepal."

ROMANIA[4]

The Romanian People's Republic does not consider itself bound by the terms of Section 30 of the Convention which provide for the compulsory jurisdiction of the International Court in differences arising out of the interpretation or application of the Convention; with respect to the competence of the International Court in such differences, the Romanian People's Republic takes the view

that, for the purpose of the submission of any dispute whatsoever to the Court for a ruling, the consent of all the parties to the dispute is required in every individual case. This reservation is equally applicable to the provisions contained in the said section which stipulate that the advisory opinion of the International Court is to be accepted as decisive.

THAILAND

". . . Officials of the United Nations of Thai nationality shall not be immune from national service obligations."

TURKEY[5]

With the following reservations:

(a) The deferment, during service with the United Nations, of the second period of military service of Turkish nationals who occupy posts with the said Organization, will be arranged in accordance with the procedures provided in Military Law No. 1111, account being taken of their position as reserve officers or private soldiers, provided that they complete their previous military service as required under Article 6 of the above-mentioned Law, as reserve officers or private soldiers.

. . . . . .

(e) Turkish nationals entrusted by the United Nations with a mission in Turkey as officials of the Organization are subject to the taxes payable by their fellow citizens. They must make an annual declaration of their salaries in accordance with the provisions set forth in Chapter 4, Section 2, of Law No. 5421 concerning income tax.

UKRAINIAN SOVIET SOCIALIST REPUBLIC[4]

The Ukrainian Soviet Socialist Republic does not consider itself bound by the provision of Section 30 of the Convention which envisages the compulsory jurisdiction of the International Court and, in regard to the competence of the International Court in differences arising out of the interpretation and application of the Convention, the Ukrainian Soviet Socialist Republic will, as hitherto, adhere to the position that, for the submission of a particular dispute for settlement by the International Court, the consent of all the parties to the dispute is required in every individual case. This reservation is equally applicable to the provision contained in the same section, whereby the advisory opinion of the International Court shall be accepted as decisive.

UNION OF SOVIET SOCIALIST REPUBLICS[4, 6]

The Soviet Union does not consider itself bound by the provision of Section 30 of the Convention which envisages the compulsory jurisdiction of the International Court, and in regard to the competence of the International Court in differences arising out of the interpretation and application of the Convention, the Soviet Union will, as hitherto, adhere to the position that, for the submission of a particular dispute for settlement by the International Court, the consent of all the parties to the dispute is required in every individual case. This reservation is equally applicable to the provision contained in the same section, whereby the advisory opinion of the International Court shall be accepted as decisive.

UNITED STATES OF AMERICA

"(1) Paragraph *(b)* of Section 18 regarding immunity from taxation and paragraph *(c)* of Section 18 regarding immunity from national service obligations shall not apply with respect to United States nationals and aliens admitted for permanent residence.

(2) Nothing in Article IV, regarding the privileges and immunities of representatives of Members, in Article VI, regarding the privileges and immunities of United Nations officials, or in Article VI, regarding the privileges and immunities of experts on missions for the United Nations, shall be construed to grant any person who has abused his privileges of residence by activities in the United States outside his official capacity exemption from the laws and regulations of the United States regarding the continued residence of aliens, provided that:

(a) No proceedings shall be instituted under such laws or regulations to require any such person to leave the United States except with the prior approval of the Secretary of State of the United States. Such approval shall be given only after consultation with the appropriate Member in the case of a representative of a Member (or member of his family) or with the Secretary-General in the case of any person referred to in Articles V and VI;

(b) A representative of the Member concerned or the Secretary-General, as the case may be, shall have the right to appear in any such proceedings on behalf of the person against whom they are instituted;

(c) Persons who are entitled to diplomatic privileges and immunities under the Convention shall not be required to leave the United States otherwise than in accordance with the customary procedure applicable to members of diplomatic missions accredited or notified to the United States."

VIET NAM

Reservation in respect of Article VIII, Section 30:

1. Disputes concerning the interpretation or application of the Convention shall be referred to the International Court of Justice for settlement only with the consent of all parties concerned.

2. The opinion of the [International] Court of Justice referred to in Article VIII, Section 30, shall be merely advisory and shall not be considered decisive without the consent of all parties concerned.

NOTES

[1] Resolution 22 A (I). See *Resolutions adopted by the General Assembly during the First Part of its First Session* (A/64), p. 25.

[2] In a communication accompanying the instrument of accession, the Government of the Federal Republic of Germany declared that the said Convention shall also apply to Berlin (West) with effect from the date on which it enters into force for the Federal Republic of Germany.

In this regard the Secretary-General received, on the dates indicated, the following communications:

Union of Soviet Socialist Republics (9 November 1981):

> The declaration made by the Government of the Federal Republic of Germany when depositing the instrument of accession, to the effect that the said Convention shall extend to Berlin (West), is incompatible with the Quadripartite Agreement of 3 September 1971. That Agreement, as is generally known, does not grant the

Federal Republic of Germany the right to extend to West Berlin international agreements which affect matters of security and status. The above-mentioned Convention belongs precisely to that category of agreement.

In particular, the 1946 Convention regulates the granting of privileges and immunities to United Nations organs and officials in the State territory of countries parties to it, including immunity from legal proceedings and immunity from arrest or detention. Thus, the Convention concerns sovereign rights and obligations which cannot be exercised by a State in a territory which does not come under its jurisdiction.

In view of the foregoing, the Soviet Union considers the declaration made by the Federal Republic of Germany on extending the application of the Convention on the Privileges and Immunities of the United Nations to Berlin (West) to be illegal and to have no legal force.

German Democratic Republic (23 December 1981):

"Concerning the application of the Convention on Privileges and Immunities of the United Nations on 13 February 1946 to Berlin (West) the German Democratic Republic states in accordance with the Quadripartite Agreement of 3 September 1971, that Berlin (West) continues not to be a constituent part of the Federal Republic of Germany and cannot be governed by it.

The declaration made by the Federal Republic of Germany to the effect that the said Convention shall be extended to Berlin (West) is contrary to the Quadripartite Agreement in which it is stipulated that international agreements affecting matters of security and status of Berlin (West) cannot be extended by the Federal Republic of Germany to Berlin (West).

In view of the foregoing, the declaration made by the Federal Republic of Germany will have no validity."

France, the United Kingdom of Great Britain and Northern Ireland and the United States of America (8 June 1982):

"In a communication to the Government of the Union of Soviet Socialist Republics, which is an integral part (Annex IV A) of the Quadripartite Agreement of 3 September 1971, the Governments of France, the United Kingdom and the United States, confirmed that, provided matters of security and status are not affected and provided that the extension is specified in each case international agreements and arrangements entered into by the Federal Republic of Germany may be extended to the Western Sectors of Berlin in accordance with established procedures. For its part, the Government of the Union of Soviet Socialist Republics, in a communication to the Governments of the Three Powers, which is similarly an integral part (Annex IV B) of the Quadripartite Agreement of 3 September 1971, affirmed that it would raise no objection to such extension.

The established procedures referred to above which were endorsed in the Quadripartite Agreement, are designed *inter alia* to afford the authorities of the Three Powers the opportunity to ensure that international agreements and arrangements entered into by the Federal Republic of Germany which are to be extended to the Western Sectors of Berlin are extended in such a way that matters of security and status are not affected.

When authorizing the extension of the above-mentioned Convention to the Western Sectors of Berlin, the authorities of the Three Powers took such steps as were necessary to ensure that the application of the Convention to the Western Sectors of Berlin remained subject to Allied rights and responsibilities in the field of privileges and immunities of international organisations. Accordingly, the validity of the Berlin declaration made by the Federal Republic of Germany in accordance with established procedures is unaffected and the application of the Convention to the Western Sectors of Berlin continues in full force and effect, subject to Allied rights and responsibilities.

With reference to the said communication for the Government of the German Democratic Republic we wish to state that States which are not party to the Quadripartite Agreement are not competent to comment authoritatively on its provisions. The three Governments do not consider it necessary, nor do they intend to

respond to any further communications from States which are not party to the Quadripartite Agreement. We wish to point out that the absence of a response to further communications of a similar nature should not be taken to imply any change in their position on this matter."

Federal Republic of Germany (16 August 1982):

"By their note of 28 May 1982, . . . the Governments of France, the United Kingdom and the United States answered the assertions made in the communication referred to above. The Government of the Federal Republic of Germany, on the basis of the legal situation set out in the note of the Three Powers, wishes to confirm that the application in Berlin (West) of the above-mentioned Convention extended by it under established procedures continues in full force and effect, subject to Allied rights and responsibilities.

The Government of the Federal Republic of Germany wishes to point out that the absence of a response to further communications of a similar nature should not be taken to imply any change of its position in this matter."

Union of Soviet Socialist Republics (29 December 1982):

The Soviet side once again confirms, as was already stated in the Mission's note of 9 November 1981, that the declaration of the Federal Republic of Germany concerning the extension to West Berlin of the application of the Convention on the Privileges and Immunities of the United Nations of 13 February 1946 is a violation of the Quadripartite Agreement of 3 September 1971 and therefore has no legal force.

The Quadripartite Agreement, as is well known, clearly determined that by no means all international treaties of the Federal Republic of Germany may be extended to West Berlin, but only those which do not affect matters of status and security. The above-mentioned Convention, by reason of its content, directly affects such matters.

The declarations by the Governments of France, the United Kingdom and the United States of America that in the extension of the Convention to West Berlin by the Federal Republic of Germany the established procedures are being observed do not alter the substance of the problem. Those procedures may be applied only in relation to international treaties which the Federal Republic of Germany is entitled to extend to West Berlin. The Convention of 13 February 1946 is not such a treaty.

At the same time the Soviet side wishes to point out that the Quadripartite Agreement of 3 September 1971 contains provisions relating to West Berlin which have universal force of international law. The extension of the Convention of 13 February 1946 to West Berlin by the Federal Republic of Germany notwithstanding those provisions naturally affects the interests of other parties to the Convention, which have the right to express their opinions in the matter. That right cannot be disputed by anyone.

Accordingly, the Soviet side rejects as unfounded the assertions made by the Governments of France, the United Kingdom and the United States of America concerning the declaration by the German Democratic Republic [. . .]. The view set forth in that declaration by the German Democratic Republic as a party to the Convention on the Privileges and Immunities of the United Nations is fully consistent with the Quadripartite Agreement of 3 September 1971.

United States of America, France and the United Kingdom of Great Britain and Northern Ireland (7 July 1983):

"The three Missions wish to recall the position set forth in their communication to the Secretary-General's Note No. [. . .] dated 20 July 1982. They wish further to recall that the Quadripartite Agreement is an international agreement concluded between the four contracting parties and not open to participation by any other State. In concluding this agreement, the Four Powers acted on the basis of their quadripartite rights and responsibilities, and the corresponding wartime and post-war agreements and decisions of the Four Powers which are not affected. The Quadripartite Agreement is part of conventional, not customary international law.

States which are not parties to the Quadripartite Agreement are not competent to comment authoritatively on its provisions. The absence of a response to further communications of a similar nature should not be taken to imply any change of their position in this matter."

[1] In a communication received on 25 November 1960, the Government of New Zealand gave notice of the withdrawal of the reservation made upon deposit of its instrument of accession. For the text of that reservation, see United Nations, *Treaty Series*, Vol. 11, p. 406.

[2] The Government of the United Kingdom of Great Britain and Northern Ireland notified the Secretary-General, on the dates indicated, that it was unable to accept certain reservations made by the States listed below because in its view they were not of the kind which intending parties to the Convention have the right to make.

Date of the receipt of the objection, or date on which it was circulated by the Secretary-General[a]*:*		*Reserving State:*
4 August	1954[a]	Byelorussian SSR
4 August	1954[a]	Ukrainian SSR
4 August	1954[a]	Union of Soviet Socialist Republics
1 December	1955[a]	Czechoslovakia
6 September	1956[a]	Romania
4 September	1956[a]	Hungary
2 October	1957[a]	Albania
20 June	1967	Algeria
20 June	1967	Bulgaria
20 June	1967	Mongolia
20 June	1967	Nepal
21 September	1972	Indonesia
29 November	1974	German Democratic Republic
8 November	1979	China

[1] By a notification received by the Secretary-General on 20 June 1957, the Government of Turkey withdrew the second, third and fourth reservations contained in its instrument of accession. For the text of those reservations see: United Nations, *Treaty Series*, Vol. 70, p. 266.

[2] By a communication received on 5 January 1955, the Government of Lebanon notified the Secretary-General that it objected to this reservation.

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108. General Assembly resolution 179 (II), Convention on the Privileges and Immunities of the Specialized Agencies, 1947, and annexes thereto, adopted on 21 November 1947[1]

109. Accession, succession and reservations to the Convention on the Privileges and Immunities of the Specialized Agencies[1]

Multilateral Treaties Deposited with the Secretary-General, Status as at 31 December 1988, ST/LEG/SER.E/7, Chap. III.2

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[1] Document not reproduced. *[Note by the Registry.]*

110. Aide-Mémoire Dated 26 August 1960 from the Department of Legal Affairs to the Permanent Mission of a Member State

1. The Permanent Mission of . . . to the United Nations, through Mr. . . ., First Secretary, intimated to the Office of Legal Affairs that there has been under consideration in the Foreign Office at . . . the accession of . . . to the Convention on the Privileges and Immunities of the United Nations subject to certain reservations. The Permanent Mission informally asked for the opinion of the Office of Legal Affairs with regard to those reservations. As the proposed reservations would directly affect the United Nations, the Office of Legal Affairs welcomes the opportunity informally to state herein below the view of the Secretariat.

2. The text of the reservations under consideration at . . . is as follows (original in . . . English translation by the Secretariat):

> "A. Having regard to the property system established by the Political Constitution of the . . . the United Nations and its organs acting as agencies of execution may not acquire immovable property in . . . territory.
>
> B. Officials and experts of the United Nations and its organs who are of . . . nationality shall, while exercising their functions within . . . territory, enjoy only those prerogatives which are accorded to officials and experts respectively under Section 18, paragraphs *(a)*, *(d)*, *(f)* and *(g)*, and Section 22, paragraphs *(a)*, *(b)*, *(c)*, *(d)* and *(f)*, of the Convention on the Privileges and Immunities of the United Nations, on the understanding that the inviolability established under the said Section 22, paragraph *(c)*, shall be accorded solely in respect of official papers and documents."

3. The Convention on the Privileges and Immunities of the United Nations, adopted by the General Assembly of the United Nations on 13 February 1946, has its basis in Articles 104 and 105 of the Charter of the United Nations. It defines the extent of the legal capacity as well as the privileges and immunities of the Organization, of the representatives of Member States and of officials of the Organization which the General Assembly determined as necessary for the independent exercise of the functions and the fulfilment of the purposes of the Organization. Thus, any diminution of the legal capacity or privileges or immunities provided for in the Convention may tend to affect the exercise of functions or the fulfilment of the purposes of the United Nations. For this reason, any reservation on the part of any Member State to the Convention cannot fail to have an adverse effect upon the United Nations as an Organization. With reference to the particular reservations presently under consideration at . . ., the following observations may be pertinent and are submitted for the consideration of the Permanent Mission.

[Paras. 4-10 not reproduced]

Reservations in Respect of Experts on Mission for the United Nations

11. *(a) As for the proposed reservations in respect of experts on mission for the United Nations under Section 22* (d) *and* (e) *of the Convention*, it should be emphasized, at the outset, that these experts on mission are not to be confused with Technical Assistance experts. While the latter are usually officials of the United Nations, the former are persons who, as the term denotes, are on mission for the United Nations and who are neither representatives to nor officials of the United Nations. Some examples of such experts on mission are

the members of the International Law Commission and members of the Advisory Committee on Budgetary and Administrative Questions, members of the permanent Central Opium Board, the United Nations Plebiscite Administrator for Kashmir, the military observers in India and Pakistan as well as those in Palestine: all serve in an individual capacity. For these persons, the right "to use codes and to receive papers or correspondence by courier or in sealed bags" and the privilege of exchange facilities are at times necessary for the performance of their functions.

12. *(b) With regard to the statement* in the proposed text of reservations that "on the understanding that the inviolability provided for under *paragraph* (c) *of the aforementioned Section 22* shall be accorded only with regard to official papers and documents", such a statement seems superfluous, since it is obvious that inviolability could only pertain to official papers and documents.

13. In view of the foregoing considerations, it is to be hoped that . . . would see her way clear to acceding to the Convention without the reservations under consideration.

Existing Reservations to the Convention

14. Heretofore reservations have been made upon accession to the Convention only with reference to three of the provisions of the Convention: (1) with reference to Section 18 *(b)* on income tax exemption: Canada, Laos, New Zealand and Turkey; (2) with reference to Section 18 *(c)* on exemption from national service obligations: Laos, Thailand, Turkey; (3) with reference to the provision of Section 30 which envisages the compulsory jurisdiction of the International Court of Justice for the settlement of differences arising out of the interpretation or application of the Convention: Albania, Byelorussia, Czechoslovakia, Hungary, Romania, Ukrainian SSR and the Union of Soviet Socialist Republics. Should the proposed reservations by the Government of . . . be all maintained, the number of provisions of the Convention to which reservations have been made would increase by four, namely, those to Sections 1 *(b)*, 18 *(e)*, 22 *(d)* and 22 *(e)*, and may suggest similar reservations by other States.

Procedure in Respect of Reservations

15. The practice of the Secretary-General in regard to an accession to the Convention has been to inform all Members of the United Nations of the accession, in accordance with Section 33 of the Convention. In case an accession was accompanied by a reservation, the text of the reservation was also transmitted to all Members. Where a Member State notified the Secretary-General of its objection to a reservation, the text of the objection is similarly notified to the Member States. Thus when the United Kingdom of Great Britain and Northern Ireland expressed objections to the reservations made by Turkey, the Soviet Union, the Byelorussian Soviet Socialist Republic, the Ukrainian SSR, Czechoslovakia, Romania and Hungary, her objections were circulated, on each occasion, to all Member States. This procedure is in conformity with that established under General Assembly resolution 1452/B (XIV) of 7 December 1959.

26 August 1960.

111. Aide-Mémoire dated 22 October 1963 from the Department of Legal Affairs to the Permanent Representative of a Member State regarding proposed accession to the General Convention subject to a reservation denying any United Nations officials of that State's nationality any privileges or immunities under the Convention [1] — *United Nations Juridical Yearbook*, 1963, Chap. VI.A, No. 22

112. Statement by the United Nations Legal Counsel at the 1016th meeting of the Sixth Committee on 6 December 1967 [1] — *General Assembly, Official Records*, Twenty-second Session, Annexes, agenda item 98, A/C.6/385, A/C.6/SR.1016(XXII), paras. 22-32; *United Nations Juridical Yearbook*, 1967, Chap. VI.A, No. 2

Part III. Materials Relevant to the Status of Experts on Mission

113. Extracts from *Immunities and Privileges of International Officials, the Experience of the League of Nations* by Martin Hill, Washington, Carnegie Endowment for International Peace, 1947, pp. 8-13 [1]

114. Memorandum dated 30 July 1943 from the United Nations Legal Department to the Comptroller [1]

115. Circular letter from the Secretary-General to Governments, dated 9 May 1951, on the status of Technical Assistance Experts [1]

116. Tax Exemption for short-term consultants, Technical Assistance Board, 23rd meeting, New York, item 14, TAB/Working Paper/5/23, Section B: Extracts from memorandum from the Department of Legal Affairs to the Technical Assistance Board, dated 10 March 1953 [1]

117. Field Administration Handbook: United Nations *laissez-passer*, United Nations Certificate, United Nations family certificate, national passport and visas, Field Operations Service, April 1972 (extracts) [1]

[1] Document not reproduced. *[Note by the Registry.]*

118. Memorandum of Agreement of the United Nations Economic Commission for Asia and the Far East (in particular para. 5)[1]	
119. Telegram dated 25 January 1973 from the Legal Counsel to the United Nations Office in Geneva regarding the status of members of the Joint Inspection Unit[1]	
120. Letter dated 8 October 1973 from the Legal Counsel addressed to a member of the Joint Inspection Unit[1]	
121. Memorandum dated 4 January 1974 from the Office of Legal Affairs to the Division of Human Rights regarding questions whether a change of governmental affiliation or nationality of an expert would affect his membership in the *ad hoc* Working Group of Experts of the Commission on Human Rights[1]	*United Nations Juridical Yearbook*, 1974, Chap. VI.A, No. 14
122. Memorandum dated 15 September 1969 from the Office of Legal Affairs to the Division of Human Rights regarding the privileges and immunities of the members of the Committee on the Elimination of Racial Discrimination[1]	*United Nations Juridical Yearbook*, 1969, Chap. VI.A, No. 3
123. Guide to the issuance of United Nations travel documents, dated 1 June 1978 (extracts)[1]	PAB/INF.78/2
124. Photocopy of United Nations Certificate issued for experts on missions[1]	
125. Letter dated 9 April 1981 from the Office of Legal Affairs to the Counsel for the General Counsel of (US) National Labor Relations Board, regarding the status of the Special Representative of the Secretary-General to the United Nations International School[1]	

[1] Document not reproduced. *[Note by the Registry.]*

UNDP/ADM/FIELD/762
UNDP/ADM/HQRTS/503.

126. Memorandum dated 17 April 1981 from the Assistant Administrator, Bureau for Finance and Administration, to the Field Offices of UNDP and UNDP Headquarters Staff

17 April 1981.

SUBJECT: *Clarification of the terms "officials" and "experts on mission"*

1. The distinction between "officials" and "experts on mission" for purposes of privileges and immunities has, on occasion, caused some confusion. This may have stemmed from the popular use of the term "expert" to refer to technical co-operation project personnel whereas the term "expert on mission" as used in the Convention on Privileges and Immunities was intended to refer to a different type of person. Consequently, there has at times been a misunderstanding that provisions in the Convention on Privileges and Immunities for "experts on mission" are applicable to such project personnel instead of the provisions in respect of "officials" of the United Nations. In fact, technical co-operation experts normally fall in the category of "officials" of the Organizations. In order to eliminate such confusion, we have obtained from the UN Legal Counsel a note of clarification of the meaning of both terms.

2. I am pleased to attach a copy of the note of clarification, which it is hoped will be helpful to you, particularly paragraph 2. If there is any occasion where a similar confusion arises in your country of assignment, you may feel free to use the enclosed note in discussions and communications with the Government.

(Signed) Pierre VINDE.

NOTE

Clarification of the Meaning of the Terms "Officials" and "Experts on Missions" as Used in the Convention on the Privileges and Immunities of the United Nations and the Relevant Annexes of the Convention on the Privileges and Immunities of the Specialized Agencies

1. The basic distinctions

The Convention on the Privileges and Immunities of the United Nations distinguishes between two main categories of persons performing services for the United Nations, "officials" whose privileges and immunities are enumerated in Articles V and VII of the Convention, and "experts on missions for the United Nations" whose privileges and immunities are enumerated in Article VI of the Convention. The Convention on the Privileges and Immunities of the Specialized Agencies does not contain provisions similar to Article VI of the United Nations Convention but the Annexes of the Specialized Agencies Convention applicable to the ILO, FAO, ICAO, UNESCO, WHO, IMCO, WIPO, and IFAD refer to a category designated as experts other than officials.

2. Definition of "officials"

Section 17 of the United Nations Convention provides that the Secretary-General shall specify the categories of officials to which Article V should apply and submit these categories to the General Assembly. On the basis of the Secretary-General's submission in this regard the General Assembly, in 1946, adopted resolution 76 (I) approving the granting of the privileges and immunities

referred to in Article V and Article VII "to all members of the staff of the United Nations, with the exception of those who are recruited locally and are assigned to hourly rates". The categories established in resolution 76 (I) have remained unchanged. Consequently, all members of the staff of the United Nations, that is to say persons serving on staff appointments whether internationally or locally recruited, with the exception of persons who are both locally recruited and paid on hourly rates are regarded by the Secretary-General as being entitled to the privileges and immunities specified in Articles V and VII of the UN Convention. Technical assistance experts normally hold such appointments. The practice of the specialized agencies has followed closely that of the United Nations.

3. Definition of "experts on missions"

The term "experts on mission for the United Nations" used in Article VI of the United Nations Convention, or the term "experts other than officials" which is employed in the Annexes to the Specialized Agencies Convention, apply to persons performing missions for the United Nations or Specialized Agencies who are neither representatives of governments nor officials of the Organizations but who must enjoy certain privileges and immunities in order to be able to perform their functions. Examples of such persons are members of commissions and committees of the United Nations or Specialized Agencies who serve in their individual capacity and not as governmental representatives, and military observers. This category includes such persons as UNTSO and UNMOGIP military observers, the Headquarters staff of UNIFICYP, UNDOF and UNIFIL and members of the United Nations Administrative Tribunal, the International Law Commission and the ACABQ.

4. Formal and substantive differences between the two categories

From the formal point of view, the chief distinction between "officials" and "experts on mission" is that while the former are accorded so-called "functional" privileges and immunities, the latter are accorded a status which is quasi-diplomatic in nature. Substantively, the chief distinctions are (i) that "officials" are exempt from taxation on the salaries and emoluments paid to them by the United Nations or Specialized Agencies, whereas "experts on mission" are accorded no such exemption; and (ii) "officials" enjoy official act immunity whereas "experts on mission" enjoy complete immunity from personal arrest or detention.

5. The UNDP Standard Basic Assistance Agreement

While the two main categories of "officials" and "experts on missions" established by the privileges and immunities conventions provide the basic framework, the conventions have been supplemented by the UNDP Standard Basic Assistance Agreement, the privileges and immunities provisions of which are designed to ensure the application of the Convention to all "persons performing services" for the United Nations. Such persons are defined as including "operational experts, volunteers, consultants, and juridical as well as natural persons and their employees . . . governmental or non-governmental organizations or firms which UNDP may retain . . . and their employees", other than Government nationals employed locally. (UNDP SBAA, Article IX.5.) These persons are accorded the same privileges and immunities as "officials" of the United Nations or the Specialized Agencies in respect of services performed in countries parties to the UNDP Agreement.

127. Memorandum dated 3 September 1981 from the Office of Legal Affairs to the Centre for Disarmament concerning the legal status of the Group of Experts to investigate the use of chemical weapons[1]

128. Memorandum dated 19 November 1981 from the Office of Legal Affairs to the Office of General Services regarding travel identity documents for the United Nations Relief Co-ordinator (UNDRO) personnel on loan from Governments[1]

129. Contract (Experts) dated February 1982 entered into between the United Nations and Mr. Olof Palme for undertaking a special mission to Iran/Iraq on behalf of the Secretary-General, pursuant to Security Council documents S/14244 and S/14251[1]

130. Memorandum dated 15 July 1982 from the Office of Legal Affairs to the Centre for Disarmament regarding an invitation from Democratic Kampuchea for an on-site visit by the Group of Experts to Investigate Reports of Alleged Use of Chemical Weapons[1]

131. Memorandum dated 22 August 1983 from the Office of Legal Affairs to the Controller concerning taxation of honoraria payable to members of the Human Rights Committee[1]

132. Letter dated 2 May 1984 from the Legal Counsel to a member of the Human Rights Committee regarding taxation of honoraria payable to members of the Human Rights Committee[1]

133. Letter dated 28 February 1985 from the Department of Technical Co-operation for Development to the Minister of Finance of Cyprus, regarding the hosting of an Interregional Training Programme in Government Budgetary Methods and Procedures in Cyprus[1]

134. Letter dated 13 May 1985 from the Under-Secretary-General for Political Affairs, Trusteeship and Decolonization to the Foreign Ministry of Tunisia

[1] Document not reproduced. *[Note by the Registry.]*

regarding the holding of an Extraordinary Session of the Special Committee of 24 in Tunisia[1]

135. Memorandum dated 1 August 1985 from the Office of Legal Affairs to the Office of Personnel Services concerning the status of Language Co-ordinators paid directly by the Government of France[1]

136. Memorandum dated 20 February 1986 from the Office of Legal Affairs to the Office of General Services concerning the status of members of UNMO[1]

137. Agreement dated 27 February 1987 between the United Nations and Nigeria on United Nations Meeting of Experts on Space Science and Technology and Its Applications within the Framework of Educational Systems (extracts of Arts. I, II and V)[1]

138. Memorandum dated 24 January 1989 from the Office of Legal Affairs to the United Nations Children's Fund concerning the assignment of US Government civil servants to UNICEF[1]

139. Memorandum dated 1 March 1989 from the Office of Legal Affairs to the United Nations Office at Geneva regarding the status of French military personnel participating in the multinational de-mining missions[1]

140. Letter dated 1 May 1989 from the Legal Counsel to the President of the Administrative Tribunal regarding the status of members of the Tribunal[1]

141. Special Service Agreement, United Nations Development Programme (SSA (8-81) (sample), para. 5)[1]

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[1] Document not reproduced. *[Note by the Registry.]*

141A. Sample of Special Service Agreement (Expert on Mission) (TCD 25/A (3-85), para. 4)

Special Service Agreement

(Expert on Mission)

MEMORANDUM OF AGREEMENT MADE THIS . . . day of . . . 19 . . ., between the United Nations and . . . (hereinafter referred to as the "subscriber") whose address is . . .

1. NATURE OF SERVICES

The subscriber shall perform the following services according to the following schedule:
(Unless there is specific stipulation to the contrary under 3. below, the entire period of service except for authorized travel time shall be rendered at the location of the project herein specified, and within the working days and hours observed by said project.)

2. DURATION OF AGREEMENT

This agreement shall commence on the . . . day of . . . 19. . ., and shall expire on the satisfactory completion of the services described above, but not later than the . . . day of . . . 19. . ., unless sooner terminated under the terms of this agreement. Either party may terminate this agreement at any time by giving the other party . . . days notice in writing of its intention to do so, provided that when termination is at the subscriber's initiative the subscriber shall be responsible to the United Nations for any additional costs which may result from such termination, in the same manner as for the subscriber's failure to complete services satisfactorily under this agreement, and the amount of such costs may be withheld from any amount otherwise due to the subscriber from the United Nations.

In the event of this agreement being terminated prior to its due expiration date, or when the actual period of services rendered is shorter than the duration stipulated the subscriber shall be compensated for the actual amount of work performed to the satisfaction of the United Nations on a pro rata basis, subject to the proviso set forth in the previous paragraph.

3. CONSIDERATION

As full consideration for the services performed by the subscriber under the terms of this agreement, the United Nations shall pay

NOTE: The subscriber will be responsible for any taxes due on the remuneration and as a consequence, no statement of earnings will be issued by the United Nations to the subscriber.

4. STATUS OF THE SUBSCRIBER

The subscriber shall be considered as having the legal status of an Expert on Mission for the purposes of the Convention on the Privileges and Immunities of the United Nations. The subscriber shall not be considered in any respect as being a staff member of the United Nations. If required to travel by the United Nations the subscriber may receive a United Nations certificate.

5. RIGHTS AND OBLIGATIONS OF THE SUBSCRIBER

The rights and obligations of the subscriber are strictly limited to the terms and conditions of this agreement. The subscriber shall not be entitled to any benefit, payment, subsidy, compensation or entitlement, except as expressly provided for in this agreement. In the event of death, injury or illness attributable to the performance of services on behalf of the United Nations under the terms of this agreement, the subscriber shall be entitled to compensation equivalent to the compensation which would be payable under Appendix D to the Staff Rules to a staff member of the United Nations earning a gross pensionable remuneration of $50,000 per annum.

The subscriber shall neither seek not accept instructions regarding the present services for the United Nations from any Government or from any authority external to the United Nations. The subscriber shall exercise the utmost discretion in all matters relating to the services under this agreement and may not communicate at any time to any other person, Government or authority external to the United Nations any information made known to the subscriber by reason of the subscriber's association with the United Nations that has not been made public, except as required by the performance of the duties specified in this agreement, or as expressly authorized by the Secretary-General or his designate; nor shall the subscriber at any time use such information to private advantage. These obligations shall not lapse upon cessation of the subscriber's contractual relationship with the United Nations.

During the period of service under this agreement, the subscriber may not engage in any activity that is incompatible with the performance of the duties specified in this agreement.

6. TITLE RIGHTS

The title rights, copyrights, and all other rights of whatsoever nature in any material produced under the provisions of this agreement shall be vested exclusively in the United Nations.

7. SETTLEMENT OF DISPUTES

Any claim or dispute relating to the interpretation or implementation of the present agreement that cannot be settled amicably shall be submitted to arbitration in New York by a single arbitrator agreed upon by both parties. Should the parties be unable to agree on a single arbitrator within 30 days of arbitration, then each party shall proceed to appoint one arbitrator and the two arbitrators thus appointed shall agree on a third. Failing such agreement, either party may request the appointment of the third arbitrator by the President of the United Nations Administrative Tribunal. The arbitrator shall rule on the costs which may be divided between the parties. The decision rendered in the arbitration shall constitute final adjudication of the dispute.

IN WITNESS WHEREOF, the parties hereto have executed this agreement.

By: _____ _____

Certifying Officer (Subscriber)

By: _____

Technical Assistance Recruitment and Administration Service, Department of Technical Co-operation for Development, United Nations

142. Sample of Special Service Agreement for a Consultant, para. 1 [1]

143. The practice of the United Nations, the specialized agencies and the International Atomic Energy Agency concerning their status, privileges and immunities: study prepared by the Secretariat [1] — A/CN.4/L.118 and Add.1 and 2 *Yearbook of the International Law Commission*, 1967, Vol. II (extracts)

144. Relations between States and International Organizations (Second Part of the Topic) (International Law Commission, Thirty-seventh Session, 6 May-26 July 1985) (Extracts)

(The practice of the United Nations, the specialized agencies and the International Atomic Energy Agency concerning their status, privileges and immunities: supplementary study prepared by the Secretariat)

A/CN.4/L.385/Add.1
24 May 1985.

CHAPTER V. PRIVILEGES AND IMMUNITIES OF EXPERTS ON MISSIONS FOR THE UNITED NATIONS AND OF PERSONS HAVING OFFICIAL BUSINESS WITH THE UNITED NATIONS

Section 33. Persons Falling within the Category of "Experts on Missions for the United Nations"

77. The scope and meaning of the category of "experts on missions" in relation to the members of a treaty organ, as distinct from a subsidiary organ, was the subject of memorandum by the Office of Legal Affairs to the Director of the Division of Human Rights in 1969 as follows:

> "1. I have received your memorandum inquiring about the status, privileges and immunities of the members of the Committee on the Elimination of Racial Discrimination and members of *ad hoc* conciliation commissions established under Article 12 of the International Convention on the Elimination of All Forms of Racial Discrimination [2]. In our opinion, members of the Committee and members of the conciliation commissions are to be considered experts on missions for the United Nations within the meaning of Sections 22, 23 and 26 of the Convention on the Privileges and Immunities of the United Nations and Section 11 of the Headquarters Agreement with the United States, and are entitled to the privileges, immunities and facilities therein laid down.
>
> 2. The International Convention on the Elimination of All Forms of Racial Discrimination opened for signature on 7 March 1966, does not expressly provide for the status of the members of the Committee. Nevertheless the Convention gives indications from which that status can be inferred.

[2] United Nations, *Treaty Series*, Vol. 660.

[1] Document not reproduced. *[Note by the Registry.]*

3. There is a group of organs which, though their establishment is provided for in a treaty, are so closely linked with the United Nations that they are considered organs of the Organization. These include the former Permanent Central Opium Board (established by an Agreement of 1925[3] but made a United Nations organ by General Assembly resolution 54 (I) of 19 November 1946 and the protocol of amendment annexed thereto), the former Drug Supervisory Body (established by a Convention of 1931[4] but made a United Nations organ by the same resolution and protocol), the International Bureau for Declarations of Death (established by the Convention on the Declaration of Death of Missing Persons[5], adopted by a United Nations Conference on 6 April 1950), the Appeals Committee established under the Protocol for Limiting and Regulating the Cultivation of the Poppy Plant, the Production of, International and Wholesale Trade in, and Use of Opium[6] (adopted by a United Nations conference on 23 June 1953), and the International Narcotics Control Board (established under the Single Convention on Narcotic Drugs[7], adopted by a United Nations conference on 30 March 1961). Other similar organs are provided for in United Nations conventions which have not yet entered into force. Except for the mode of their creation, these organs are in the same position as recognized subsidiary organs of the United Nations. The Committee established under the Convention on the Elimination of All Forms of Racial Discrimination falls in the same category.

4. That Convention, which in Article 8 (para. 1) establishes the Committee, was adopted by the General Assembly in resolution 2106 (XX) of 21 December 1965. Of the organs referred to in the preceding paragraph, only the Permanent Central Opium Board and the Drug Supervisory Body share with the Committee on the Elimination of Racial Discrimination the distinction of having been made United Nations organs by a treaty which is at the same time a decision of the General Assembly. In the other cases, it has been necessary for the Assembly to decide to undertake the functions conferred on the United Nations by treaties adopted at a conference, and thereby to confer the status of the United Nations organs on the bodies in question. Where the treaty itself is also a decision of the Assembly, however, no such separate decision on assumption of functions and conferment of status is required.

5. The mode of creation of the Committee, the nature of its functions, their similarity to those of subsidiary organs, and the continuing administrative and financial ties which bind it to the United Nations remove all doubt that it is a United Nations organ, and it is thus without significance that the Third Committee rejected a proposal of the name 'United Nations Committee on Racial Discrimination'[8]. None of the other organs referred to in paragraph 3 above has the words 'United Nations' in its name, so that decision is not a strong basis for argument.

6. The purpose of the Convention, and consequently of the Committee, is, according to the preamble, to advance certain principles of the United

[3] League of Nations, *Treaty Series*, Vol. LI, p. 337.
[4] *Ibid.*, Vol. CXXXIX, p. 301.
[5] United Nations, *Treaty Series*, Vol. 119, p. 99.
[6] *Ibid.*, Vol. 456, p. 56.
[7] *Ibid.*, Vol. 520, p. 151.
[8] *Official Records of the General Assembly, Twentieth Session, Annexes, agenda item 58*, document A/6181, paras. 104 *(a)* and 110 *(a)* (i).

Nations Charter. One of the main functions of the Committee (under Art. 9) is to make annual reports to the General Assembly, and that function is like the typical activity of subsidiary organs. Another main function of the Committee is consideration of allegations by a party that another party is not giving effect to the provisions of the Convention (Art. 11), and the Committee may also be given competence by a declaration of a party to consider claims of violation submitted by individuals or groups of individuals (Art. 14). Under Article 15 and General Assembly resolution 2106 B (XX), the Committee has functions relating to petitions from inhabitants of Trust and Non-Self-Governing Territories. These functions seem to be of a judicial or quasi-judicial character; that character, however, does not prevent the Committee from being a United Nations organ. The various narcotics bodies referred to in paragraph 3 above perform quasi-judicial functions, and the Appeals Committee established under the 1953 Opium Protocol is of a fully judicial nature. Functions of these types can also be performed by subsidiary organs; the International Court of Justice, in its advisory opinion of 13 July 1954 on the *Effect of Awards of Compensation Made by the United Nations Administrative Tribunal* (*I.C.J. Reports 1954*, p. 47) has recognized the legal capacity of the General Assembly to establish judicial bodies for the fulfilment of its purposes.

7. Under Article 10, the secretariat of the Committee is provided by the Secretary-General of the United Nations, and the meetings of the Committee are normally held at United Nations Headquarters. These are important connexions with the Organization, and they ensure that the bulk of the expenses of the Committee, which will be for servicing meetings and for the secretariat, will be borne by the regular budget of the United Nations. Article 8, paragraph 6, of the Convention provides that 'States Parties shall be responsible for the expenses of the members of the Committee while they are in performance of Committee duties'. The travel and subsistence costs of members, however, are a minor fraction of the total expenses of the Committee, and the payment of part of the expenses of an organ by some means other than the regular budget of the United Nations does not prevent that body from being a United Nations organ. As regards the expenses of the Permanent Central Opium Board, the Drug Supervisory Body and the International Narcotics Control Board, there are special arrangements for the assessment of contributions from States not members of the United Nations which take part in activities concerning narcotic drugs. It may be added that in practice the members of the Committee will be paid their travel and subsistence costs from a suspense account alimented by the United Nations Working Capital Fund, as the contributions of the parties are not paid in advance of expenditure. Recognized subsidiary organs can also be financed by other means than the regular budget (e.g., UNIDO, UNRWA, etc., which depend upon voluntary contributions, and UNCTAD, to which contributions are made by participating States which are not members of the United Nations). In view of all these facts, the rejection by the Third Committee of a proposal to have all the expenses of the Committee borne by the regular budget of the United Nations[9] is not significant.

[9] *Ibid.*, paras. 109 and 110 *(f)* (i).

8. The General Assembly rejected a proposal that it should itself elect the members of the Committee[9] and provided in Article 8 of the Convention that the members should be 'elected by States Parties from among their nationals'. This does not prevent the Committee from being a United Nations organ. Two members of the Drug Supervisory Body were appointed by the World Health Organization, the International Bureau for Declarations of Death is appointed by the Secretary-General, and the Appeals Committee under the Protocol of 1953 is appointed by the President of the International Court of Justice or the Secretary-General; thus the status of United Nations organs does not require any particular mode of election. The same is true of ordinary subsidiary organs. Thus, for example, under Assembly resolution 1995 (XIX) of 30 December 1964, the Trade and Development Board is elected by UNCTAD, and the membership of other subsidiary organs has been left to be decided by the President of the Assembly (e.g., the Special Committee on Principles of International Law concerning Friendly Relations and Co-operation among States) or by the Secretary-General (e.g., the Tribunals for Libya and Eritrea).

9. What has been said above concerning the Committee applies with equal force to *ad hoc* conciliation commissions established under Article 12 of the Convention. Those commissions, like the Committee itself, are part of the machinery for the execution of the Convention and for the settlement of disputes about its application and interpretation; and the Convention aims at applying principles of the Charter. The secretariat of the Committee, provided by the Secretary-General, also serves commissions (Art. 12, para. 5), and their meetings 'shall normally be held at United Nations Headquarters . . .' (Art. 12, para. 4), with the result that the bulk of the expenses of commissions will be borne by the United Nations. The facts that commissions have judicial or quasi-judicial functions, that members are appointed by the Chairman of the Committee, and that the expenses of their members are to be shared by the parties to the dispute do not prevent them from being United Nations organs.

10. Members of the Committee and members of commissions serve 'in their personal capacity' (Art. 8, para. 1 and Art. 12, para. 2), and are therefore not representatives of Governments. It follows that they have the same status, privileges and immunities as those of members of other United Nations organs who serve in a personal capacity, that is, those of experts on mission.[1]

[9] *Ibid.*, paras. 104 *(c)* and 110 *(a)* (vi)."

A/CN.4/L.383/Add.2
27 June 1985.

Chapter V. Privileges and Immunities of Experts on Missions for the Specialized Agencies and IAEA and of Persons Having Official Business with the Specialized Agencies and IAEA

Section 33. Persons Falling within the Category of Experts on Mission for the Specialized Agencies and IAEA

206. FAO regards the following as "experts" within the terms of the relevant Annex of the Specialized Agencies Convention: *(a)* experts participating in com-

[1] *United Nations Juridical Yearbook, 1989*, p. 207.

mittees of the organization in their individual capacity; *(b)* experts not staff members of the organization (in other words, not subject to its Staff Regulations and rules or responsible to the Director-General) performing services for the organization either on a contractual basis or on the basis of an agreement with a government or on designation by a governing body; *(c)* staff of the External Auditor's Office, while on the business of FAO.

207. WHO considers persons appointed in an advisory capacity to the organization or to a government for temporary periods, and who are not staff members, to be "experts".

208. IAEA considers safeguard inspectors, project examiners and persons other than officials travelling on mission for the Agency to be experts.

209. It is to be noted that not all agencies have in the relevant Annex to the Specialized Agencies Convention reference to the privileges and immunities to be accorded experts on missions.

Section 34. Privileges and Immunities of Experts on Missions for the Specialized Agencies and IAEA

210. For the specialized agencies which have in the relevant Annexes to the Specialized Agencies Convention reference to the privileges and immunities to be accorded experts on missions and for the IAEA (Article VII of its Agreement on Privileges and Immunities), virtually no problems or difficulties have arisen in the experts in question being accorded privileges and immunities. There have been no cases where waiver of immunity has been requested. WHO states that it would waive the immunity of experts in private matters not related to their official duties, in conformity with its practice concerning staff members. ILO reports, however, that in one case, an ILO expert was arrested (see Section 42 below).

Part IV. General Materials Relevant to the Case

1. Commission on Human Rights: Terms of Reference

145. Economic and Social Council Resolution 5 (I), Adopted on 16 February 1946

(3) Commission on Human Rights and Subcommission on the Status of Women

Resolution of the Economic and Social Council of 16 February 1946 (document E/20 of 15 February 1946), on the establishment of a Commission on Human Rights and a subcommission on the Status of Women supplemented by the action taken by the Council on 18 February 1946, completing paragraphs 6 and 7 of section A and paragraphs 4 and 5 of section B concerning the initial composition of these bodies.

Section A

1. The Economic and Social Council, being charged under the Charter with the responsibility of promoting universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language or religion, and requiring advice and assistance to enable it to discharge this responsibility,

ESTABLISHES A COMMISSION ON HUMAN RIGHTS.

2. The work of the Commission shall be directed towards submitting proposals, recommendations and reports to the Council regarding;

(a) an international bill of rights;
(b) international declarations or conventions on civil liberties, the status of women, freedom of information and similar matters;
(c) the protection of minorities;
(d) the prevention of discrimination on grounds of race, sex, language or religion.

3. The Commission shall make studies and recommendations and provide information and other services at the request of the Economic and Social Council.

4. The Commission may propose to the Council any changes in its terms of reference.

5. The Commission may make recommendations to the Council concerning any subcommission which it considers should be established.

6. Initially, the Commission shall consist of a nucleus of nine members appointed in their individual capacity for a term of office expiring on 31 March 1947. They are eligible for re-appointment. In addition to exercising the functions enumerated in paragraphs 2, 3 and 4, the Commission thus constituted shall make recommendations on the definitive composition of the Commission to the second session of the Council.

7. The Council hereby appoints the following persons as initial members of the Commission:

Mr. Paal Berg ..... (Norway)
Professor René Cassin ..... (France)
Mr. Fernand Dehousse ..... (Belgium)
Mr. Victor Paul Haya de la Torre ..... (Peru)
Mr. K. C. Neogi ..... (India)
Mrs. Franklin D. Roosevelt ..... (United States of America)
Dr. John C. H. Wu[1] ..... (China)

and, in addition, persons whose names will be transmitted to the Secretary-General not later than 31 March 1946 by the members of the council for the USSR and Yugoslavia[2].

Section B

1. The Economic and Social Council, considering that the Commission on Human Rights will require special advice on problems relating to the status of women,

ESTABLISHES A SUBCOMMISSION ON THE STATUS OF WOMEN.

2. The subcommission shall submit proposals, recommendations, and reports to the Commission on Human Rights regarding the status of women.

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[1] In accordance with the procedure laid down by the Economic and Social Council, Dr. C. L. Hsia has since been nominated in place of Dr. John C. H. Wu.

[2] Dr. Jerko Radmilovic has since been nominated by the Member of the Council for Yugoslavia.

3. The subcommission may submit proposals to the Council, through the Commission on Human Rights, regarding its terms of reference.

4. Initially, the subcommission shall consist of a nucleus of nine members appointed in their individual capacity for a term of office expiring on 31 March 1947. They are eligible for re-appointment. In addition to exercising the functions enumerated in paragraphs 2 and 3, the subcommission thus constituted shall make recommendation on the definitive composition of the subcommission to the second session of the Council through the Commission on Human Rights.

5. The Council hereby appoints the following persons as initial members of this subcommission:

Mrs. Bodil Begtrup . . . . . (Denmark)
Miss Minerva Bernadino . . . . . (Dominican Republic)
Miss Angela Jurdak . . . . . (Lebanon)
Rani Amrit Kaur . . . . . (India)
Miss Mistral . . . . . (Chile)
Mrs. Viénot[1] . . . . . (France)
Miss Wu Yi-Fang[1] . . . . . (China)

and, in addition, the names of one national each from Poland and the USSR to be transmitted to the Secretary-General, not later than 31 March 1946, by the member of the Council for the Union of Soviet Socialist Republics, and three members appointed by the Commission on Human Rights to serve as *ex officio* members of this subcommission.

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146. Economic and Social Council resolution 9 (II). Commission on Human Rights, adopted 21 June 1946[2] — E/56/Rev.1; E/84, para. 4 (both as amended by the Council)

2. Sub-Commission on Prevention of Discrimination and Protection of Minorities: Terms of Reference

E/1371.

147. Commission on Human Rights, Report of the Commission on its Fifth Session, Chapter IV, Paragraph 13

A

Terms of Reference of the Sub-Commission

The Commission on Human Rights

Resolves that the terms of reference of the Sub-Commission on the Prevention of Discrimination and the Protection of Minorities be clarified and extended in scope to read as follows:

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[1] In accordance with the procedure laid down by the Economic and Social Council, Madame Lefaucheux has since been nominated in place of Madame Viénot. Similarly, Mrs. W. S. New has been nominated in place of Miss Wu Yi-Fang.

[2] Document not reproduced. *[Note by the Registry.]*

(a) to undertake studies, particularly in the light of the Universal Declaration of Human Rights and to make recommendations to the Commission on Human Rights concerning the prevention of discrimination of any kind relating to human rights and fundamental freedoms and the protection of racial, national, religious and linguistic minorities; and

(b) to perform any other functions which may be entrusted to it by the Economic and Social Council or the Commission on Human Rights.

E

Term of Office and Membership of the Sub-Commission

The Commission on Human Rights

Resolves:

(a) to extend the term of office of the present members of the Sub-Commission on the Prevention of Discrimination and the Protection of Minorities for a period of three years; and

(b) to add one additional member of the Sub-Commission to make it more representative from the point of view of geographical distribution.

C

The Fate of Minorities

The Commission on Human Rights

Resolves:

(a) to refer to the Sub-Commission on the Prevention of Discrimination and the Protection of Minorities the texts submitted to the General Assembly by the delegations of Denmark, the Union of Soviet Socialist Republics and Yugoslavia on the subject of minorities contained in A/C.3/307/Rev.2 for its consideration in the light of the discussion of this subject by the General Assembly at its third session, by the Commission on Human Rights at its fifth session, and by the latter's Committee on the Prevention of Discrimination and the Protection of Minorities; and

(b) to defer its own consideration of that subject until it has received the report of the Sub-Commission's study.

D

Priority of Work

The Commission on Human Rights

Requests the Sub-Commission to postpone consideration, until its third session on questions of implementation of human rights.

14. Each member of the Commission was asked to nominate, not later than 6 June 1949, one person, either a national or a non-national of his country, who would be available to serve as an additional member of the Sub-Commission, and to indicate briefly his qualifications. Three communications were received, each nominating Ambassador Joseph Winiewicz of Poland (docu-

ments E/CN.4/291, 294 and 295) and, at its one hundred and thirty-third meeting, the Commission declared Ambassador Joseph Winiewicz elected as the additional member of the Sub-Commission.

15. At its eighty-eighth meeting the Commission considered a proposal by the representative of Egypt concerning co-ordination between the Sub-Commission on the Prevention of Discrimination and the Protection of Minorities and the Trusteeship Council (E/CN.4/189.) This proposal, amended at the suggestion of the representatives of China and France, was adopted by 9 votes for, 2 against, and 1 abstention. The Commission thereby recommended that the Economic and Social Council request the Trustee Council to authorize the Sub-Commission on the Prevention of Discrimination and the Protection of Minorities to participate in visits to Trusteeship Territories arranged by the Trusteeship Council with a view to the preparation of measures to extend the full enjoyment of human rights and fundamental freedoms to the non-self-governing populations.

Sub-Commission

148. Fourth session, Summary Record of the sixty-fourth meeting (held at Headquarters, New York, on Monday, 1 October 1951, at 11 a.m.)[1]	E/CN.4/Sub.2/SR.64
149. Report on the fifth session, dated 23 October 1952 (para. 11)[1]	E/CN.4/670 E/CN.4/Sub.2/149
150. Report on the twenty-seventh session, dated 18 October 1974, Guidelines on methods of work (paras. 18-26)[1]	E/CN.4/1160 E/CN.4/Sub.2/354
151. Report on the thirtieth session, dated 24 October 1977 (paras. 14 and 15)[1]	E/CN.4/1261 E/CN.4/Sub.2/399
152. Summary Record of the 787th meeting (held at the Palais des Nations, Geneva, on Thursday, 25 August 1977, at 11.30 a.m.)[1]	E/CN.4/Sub.2/SR.787

153. Commission resolution 17 (XXXVII), Report of the Sub-Commission on Prevention of Discrimination and Protection of Minorities at its thirty-third session, adopted on 10 March 1981[1]	E/CN.4/1475
154. Economic and Social Council resolution 1983/32, Report of the Sub-Commission on Prevention of Discrimination and Protection of Minorities at its thirty-fifth session, adopted on 27 May 1983[1]	

[1] Document not reproduced. *[Note by the Registry.]*

155. Economic and Social Council resolution 1986/35, Procedure for the election of members of the Sub-Commission on Prevention of Discrimination and Protection of Minorities, adopted on 23 May 1986[1]

3. Other Materials

156. *United Nations Action in the Field of Human Rights: 40th anniversary of the Universal Declaration of Human Rights 1948-1988*, United Nations publication (extracts, pp. 14-19)[1]

157. Rules of Procedure of the Functional Commissions of the Council[1] E/5975/Rev.1

158. General Assembly Resolution 89 (I)

89 (I). Authorization of the Economic and Social Council to Request Advisory Opinions of the International Court of Justice

The General Assembly, under Article 96, paragraph 2, of the Charter, is empowered to authorize other organs of the United Nations and specialized agencies to request advisory opinions of the International Court of Justice on legal questions arising within the scope of their activities.

The Economic and Social Council, as one of the principal organs of the United Nations and by virtue of the functions and powers conferred upon it under Chapter X of the Charter of the United Nations, has wide responsibilities in diverse fields of economic and social co-operation, in the fulfilment of which it may need to request advisory opinions of the International Court of Justice.

In addition, by virtue of the terms of Article 63 of the Charter, the function of co-ordinating the activities of specialized agencies brought into relationship with the United Nations has been conferred upon the Economic and Social Council. To enable the Council adequately to discharge its co-ordinating responsibility, it should be authorized to request advisory opinions on all legal questions within its scope, including legal questions concerning mutual relationships of the United Nations and the specialized agencies.

The General Assembly, therefore, authorizes the Economic and Social Council to request advisory opinions of the International Court of Justice on legal questions arising within the scope of the activities of the Council.

Fifty-fifth plenary meeting,
11 December 1946.

[1] Document not reproduced. *[Note by the Registry.]*

Part V. Materials Relating to Developments Following the Request by the Economic and Social Council for an Advisory Opinion

1. Sub-Commission on Prevention of Discrimination and Protection of Minorities: Forty-first Session (Geneva, 7 August-1 September 1989)

E/CN.4/Sub.2/1989/41
10 July 1989.

159. Report on Human Rights and Youth Prepared by Mr. Dumitru Mazilu, Special Rapporteur

Introductory Note by the Secretary-General

The Commission on Human Rights, in its resolution 1985/13 of 11 March 1985, emphasized the necessity to ensure full enjoyment by youth of the rights stipulated in all relevant international instruments as indispensable for human dignity and the free development of the human personality, and requested the Sub-Commission on Prevention of Discrimination and Protection of Minorities to pay due attention to the role of youth in the field of human rights, particularly in achieving the objectives of the International Youth Year. At its thirty-eighth session, the Sub-Commission, in resolution 1985/12, referring *inter alia* to Commission resolution 1985/13, requested Mr. Dumitru Mazilu to prepare a report on human rights and youth analysing the efforts and measures for securing the implementation and enjoyment by youth of human rights, particularly the right to life, education and work, in order to facilitate the Sub-Commission's discussion on the topic. The Sub-Commission requested the Secretary-General to provide all the necessary assistance to Mr. Dumitru Mazilu for the completion of his task.

The Commission on Human Rights at its forty-third session adopted resolution 1987/44 in which it took note with appreciation of Sub-Commission resolution 1985/12 requesting one of its members to prepare the report on human rights and youth and requested the Secretary-General to provide all necessary assistance to the Special Rapporteur.

The report on Human Rights and Youth by Mr. Mazilu was to be presented to the thirty-ninth session of the Sub-Commission originally scheduled for August 1986. Pursuant to General Assembly decision 40/472 of 9 May 1986 and due to the financial crisis the thirty-ninth session was postponed until 1987. The Secretary-General, following a discussion with Mr. Mazilu on obtaining information relevant to his study addressed, on 9 January 1987, notes verbales to Governments and letters to specialized agencies and non-governmental organizations in consultative status requesting information on Mr. Mazilu's behalf. The information was dispatched regularly to him as it was received. Mr. Mazilu did not submit his report to the thirty-ninth session of the Sub-Commission and the Sub-Commission by its decision 1987/112 postponed consideration of the agenda item under which the report on human rights and youth was to be considered to its fortieth session.

The Secretary-General, with a view to assisting Mr. Mazilu in the preparation of his report for the fortieth session of the Sub-Commission, contacted Mr. Mazilu with regard to a visit to Geneva for consultation with the staff of the Centre for Human Rights and the finalization of his report. The Secretary-

General also contacted the Permanent Mission of Romania in Geneva with a view to facilitating Mr. Mazilu's visit to Geneva. Unfortunately, Mr. Mazilu informed the Secretary-General of the failure of competent authorities in his country to authorize his visit.

In April 1988, the Secretary-General received from Mr. Mazilu five chapters of his report partly in English and partly in Romanian and sought unsuccessfully to contact him in order to discuss with him matters relating to the presentation and editing of the report. The Secretary-General requested the assistance of the Romanian authorities in this regard but was still unable to contact Mr. Mazilu. In May 1989 the Secretary-General received from Mr. Mazilu the introduction, two further chapters including the conclusion and recommendations, a bibliography and a separate text containing a "special view on the Romanian case". The text received in May 1989 was both in English and Romanian. The Secretary-General again sought unsuccessfully to contact Mr. Mazilu with regard to the presentation and editing of his report. Not being able to discuss with him these matters, the present report is published as received; the part on Human Rights and Youth — "a special view of the Romanian case", will appear as an addendum to the present document due to its length, and in order to facilitate publication of the present document which required only partial translation from Romanian into English.

For information on steps taken by the Sub-Commission, the Commission on Human Rights and the Economic and Social Council on this matter reference may be made to the Secretary-General's report to the Commission on Human Rights at its forty-fifth session (E/CN.4/1989/69), Commission resolution 1989/37 (E/CN.4/1989/20, Chapter IA) and Economic and Social Council resolution 1989/75 of 24 May 1989 by which an advisory opinion on the matter was requested from the International Court of Justice.

CONTENTS

Introduction
I. Young people in today's world
II. A concise analysis of the state of human rights in the world
III. The rights and freedoms of youth as an important component of human rights in the world
IV. To deprive the younger generations and people in general of their right to freedom of thought and expression is a barbarous crime
V. Ensuring the enjoyment by youth of the right to life, education and work is of paramount importance
VI. Measures which Governments should take to ensure and promote the rights and freedom of the younger generation
VII. Charter of the rights and freedom of youth
VIII. Conclusions and recommendations
A. Conclusions
B. Recommendations
Bibliography

[Text of report not reproduced]

E/CN.4/Sub.2/1989/Add.1
10 July 1989.

160. Report on Human Rights and Youth Prepared by Mr. Dumitru Mazilu, Special Rapporteur, Addendum

A Special View on the Romanian Case

CONTENTS

I. Unprecedented aggression against the rights and freedoms of the younger generations. Grave dangers to the moral health of young people
A. The attempt to mislead millions of people by empty promises and to conceal from them the truth concerning the economic disaster into which they have been plunged by a despotic Government is not merely a profoundly immoral act but an unspeakable crime
1. The high-handedness of dictators means the failure of a whole national economy
2. Two worlds: the palaces of the despots and concentration camps for millions of people
3. The megalomania of dictators means the proliferation of peoples' sufferings
II. The younger generation has been swept clean of any faith in a political régime which, while practising the most odious dictatorship, has the audacity to maintain that it is profoundly democratic
A. Discretionary dissociation
1. The dictation of decisions. Unlimited power takes maniacal forms
2. The slavery of execution
B. Unprecedented aggression against man. Pulverization of freedom and annihilation of the personality
1. Violence and barbarous aggression by bulldozers against human beings
2. Hunger, cold and fear in the service of the subjugation of man
3. The destruction of human values is sweeping away some shining ideals of the younger generation
C. Discriminatory policies and practices continue to do violence to the human being, to trample his fundamental rights and freedoms
III. Manipulation of relations with other countries
IV. Non-interfering in domestic affairs is not a tool for covering up the crimes of tyrants against man

[Text of addendum not reproduced]

E/CN.4/Sub.2/1989/53
15 August 1989.

161. Note Verbale Dated 15 August 1989 from the Permanent Mission of the Socialist Republic of Romania to the United Nations Office at Geneva Addressed to the Centre for Human Rights

1. It has come to the knowledge of the Permanent Mission of the Socialist Republic of Romania that the so-called report on the topic "Human rights and

youth" by Mr. Dumitru Mazilu, a former member of the Sub-Commission on Prevention of Discrimination and Protection of Minorities, is at an advanced stage of publication in the United Nations Centre for Human Rights.

2. In this regard, the Mission expresses its surprise that the medical opinions made available to the Centre for Human Rights concerning Mr. Dumitru Mazilu's state of health have been ignored. The fact that the Centre's administration has agreed, in these circumstances, to sponsor the publication of some of Mr. Mazilu's ideas and judgments under the auspices of the United Nations can only harm the standing and credibility of the Organization.

3. In view of the defamatory and tendentious allegations Mr. Dumitru Mazilu is making against his country and its policies, whereas before his illness he had worked intensively as a publicist on the topics, which he presented in an entirely different light, we annex hereto some of the propositions he maintained in numerous works published in Romania. A comparison of these texts with the views contained in the so-called report submitted to the United Nations is useful for what it reveals about his intellectual and moral integrity.

4. The Permanent Mission of the Socialist Republic of Romania is in a position to provide the Sub-Commission with similar works which were published by Mr. Dumitru Mazilu before his retirement owing to incapacity for work. Obviously, since becoming ill in 1987, Mr. Dumitru Mazilu does not possess the intellectual capacity necessary for making an objective, responsible and unbiased analysis that could serve as the substance of a report consistent with the requirements of the United Nations.

5. The Permanent Mission of the Socialist Republic of Romania requests the Centre for Human Rights to take due account of the information mentioned above. Should the so-called report be issued, the Mission requests the Centre to circulate this note together with its annex as a document of the Sub-Commission at the current session under agenda item 15 *(b)*.

Annex

A. Dumitru Mazilu, *Public Opinion and Socialism*. Editura Politică, Bucharest, 1971.

1. "Our entire socio-political structure, by virtue of its profound democratism, is a guarantee for the full expression of the spirit of responsibility of the collectivity as a whole in the effort to achieve sustained development in all areas of the building of socialism. The development of socialist democracy and the heightening of the spirit of civic responsibility constitute not only a condition but also the major premise for the exercise of the active and progressive social role of our public opinion in the combined efforts of the workers engaged in building a multilaterally and harmoniously developed socialist society on the soil of Romania." (Page 33.)

2. "The fundamental political factor which ensures the attainment of such levels of maturity in our socialist public opinion is the Romanian Communist Party, the guiding political force of our entire society. Throughout its history over half a century, the Romanian Communist Party has gained this standing in our country by its policies and activities devoted entirely to the realization of the loftiest aspirations of the popular masses, in the struggle to overthrow capitalism and establish people's power and in the efforts being made for the building of socialism and for the material and spiritual development of the Romanian people." (Page 56.)

3. "A special contribution to the realization of these aspirations is being

made by the organizations of the Union of Communist Youth, students' associations and the organizations of the Pioneers. In their activities, they devote particular attention to the employment of certain appropriate forms for the education of youth, for its manifestation and for the expression of its opinions." (Page 73.)

4. "Mass and civic organizations — trade unions, youth organizations, co-operative unions, creative unions and associations, etc. — have a particularly important role to play in the common endeavour, carried out under the direction of the Party, to promote and constitute an active and progressive public opinion in all areas of social life. These organizations are themselves vanguard forums of public opinion, exercising a decisive role in shaping a progressive attitude towards work and collective ownership and in fulfilling legal and moral requirements in relations between all members of our society." (Page 78.)

5. "These youth organizations are, by their composition and nature, bound to have a dynamic character and to stimulate manifestations of the enthusiasm and creative energy inherent in young people for the purpose of guiding them along the path of constructive labour in a spirit of responsibility towards the country and the people and of devotion and abnegation in the struggle to implement the policies of the Party. It is the highly responsible duty of the organizations of the Union of Communist Youth to foster among their members an uncompromising attitude towards negative manifestations in the behaviour of certain young people and to transform the discussion of such cases into a school for educating the collective opinion of youth." (Pages 83-84.)

6. "During the years of the building of socialism in Romania, many achievements have been recorded in this area: the press, radio and television have become active means for disseminating the truth, promoting the word of the Party and realizing the fundamental interests of the people. The mobilizing role and educative contribution of these media have increased with every passing year." (Page 96.)

B. Dumitru Mazilu, *The Functions of the Socialist State*, Editura Academiei, 1972.

7. "In the years of people's power, all the intellectual resources of the people have been developed; raised to new heights, spiritual life is generating a new culture which is unitary as regards the goals it serves and its ideological content and which incorporates everything that is democratic and progressive in the culture of the past and in world culture." (Page 152.)

8. "At the same time, our State attaches particular importance to developing the system of higher education, whose purpose is to train the contingents of men of science and of culture and the specialists needed for Romania's soaring economy and cultural life. New institutes and faculties have been established, the material base of higher education has undergone major development and the number of teachers has increased." (Page 208.)

9. "A significant illustration of the scientific, Marxist-Leninist orientation of the Romanian school system is also to be found in the development of education for the various coexisting nationalities. In addition to the 2,290 establishments teaching in the Hungarian language and the various institutions teaching in German and in the languages of other nationalities, new general secondary schools, specialized secondary schools, and vocational-training schools are being added in which instruction is to be given in Hungarian, German, etc." (Page 225.)

10. "In 28 years of revolutionary transformations under the direction of the Romanian Communist Party, the workers of our country have qualitatively

changed the dimensions of freedom and — based on the increasing mastery of the laws of social development — are directing social processes in a conscious and collective manner, whereby social existence is becoming truly human and hence a free existence." (Page 260.)

11. "In pursuance of the measures adopted by the Ninth Congress of the Romanian Communist Party, the Constitution of Romania not only proclaims each right and freedom but guarantees them materially, juridically and politically; its clauses and special laws provide for severe measures against those who are tempted to restrict in any way the free and full emergence of every individual." (Page 261.)

12. "In our socialist State, the necessary conditions have been created for all State bodies, all citizens, to take part in the performance of their social duties while respecting the requirements established by the authority of the State in regulatory legislation." (Page 261.)

13. "On the basis of the Constitution and in accordance with its provisions, the new Penal Code places personal rights and freedoms side by side with the highest values of socialism." (Page 262.)

C. Dumitru Mazilu, *The Development and Defence of Collective Property*, Editura Politică, Bucharest, 1968.

14. "The organizations of the Union of Communist Youth carry out activities, under the direction of the Party, aimed at mobilizing young people for the performance of production tasks and for study, improvement of their vocational skills, assimilation of new technologies, and their education in the spirit of socialism, thus making a substantial contribution to fulfilment of the important demands of economic development and of the administration and development of collective property." (Page 83.)

D. Dumitru Mazilu, *Equity and Justice in International Life*, Editura Politică, Bucharest, 1979.

15. "Romania is making a noteworthy contribution, as an active member of the United Nations, as an active promoter of relations based on reciprocity and on respect of national existence and national dignity. In this regard, the active position of our country is of particular significance: *(a)* in the promotion of just and equitable international relations; *(b)* in the building of peace and security in Europe and throughout the world; and *(c)* in the implementation of concrete and effective disarmament measures." (Page 235.)

16. "Socialist Romania made a special and widely recognized contribution to the preparation — on a democratic basis and in accordance with fair and equitable principles and criteria — of the Conference on Security and Co-operation in Europe and has consistently sought since the adoption of the Final Act to give effect to its provisions, while deploying extensive and diverse activity for this purpose at the bilateral and the multilateral level." (Pages 238-239.)

* * *

17. Similar appraisals can be found in other works and articles published by Mr. Dumitru Mazilu. He has also argued along the same lines as those cited in this annex in special programmes broadcast on Romanian radio and television over the past two decades.

162. Draft report on the forty-first session: Chap. III. Organization of the forty-first session[1] E/CN.4/Sub.2/1989/L.10

E/CN.4/Sub.2/1989/L.10/Add.13.*

163. Draft Report on the Forty-first Session: Chapter XVI. Promotion, Protection and Restoration of Human Rights at National, Regional and International Levels

[Pages 1-3 not reproduced]

Human rights and youth

At the 40th meeting, on 1 September 1989, the Sub-Commission took up for consideration draft resolution E/CN.4/Sub.2/1989/L.57 submitted by Mr. Diaconu.

Referring to rule 65 (1) of the Rules of Procedure of the Functional Commission of the Economic and Social Council, Mr. van Boven proposed that vote should firstly be taken on draft resolution E/CN.4/Sub.2/1989/L.58.

The proposal was opposed by Mr. Alfonso Martínez and Mr. Diaconu.

An explanation of vote before the vote was made by Mr. Despouy.

The proposal was adopted by 8 votes to 5, with 5 abstentions.

At the same meeting, the Sub-Commission took up for consideration draft resolution E/CN.4/Sub.2/1989/L.58 submitted by Mr. van Boven, Ms Daes, Mr. Eide, Mr. Fix Zamudio, Mr. Hatano, Mr. Ilkahanaf, Mr. Joinet, Ms Palley, Mr. Treat and Mr. Varela Quirós.

Mr. Diaconu proposed amending the draft resolution as follows:

— Inserting, after the sixth preambular paragraph, a new paragraph reading:

> "*Noting* that some experts expressed divergent opinions concerning the contents and the form of this document";

— Inserting, after the tenth preambular paragraph, a new paragraph reading:

> "*Reaffirming* the need to observe the guidelines and practices of the Sub-Commission concerning the contents and the structure of theme reports";

Mr. Joinet proposed sub-amending Mr. Diaconu's second amendment by adding at its end "particularly the impossibility of discussing them in the absence of the Special Rapporteurs".

Mr. Sadi proposed sub-amending Mr. Joinet's sub-amendment by replacing "impossibility" by "inappropriateness".

Mr. Alfonso Martínez proposed amending the first operative paragraph by replacing "update" by "revised" and inserting "the" before "light".

Ms Palley proposed amending the draft resolution by adding a new operative paragraph after the second one reading:

> "*Decides* to invite Mr. Mazilu now to present his updated report in person to the Sub-Commission, at its forty-second session."

* This is a copy of the draft report on Chapter XVI. Final report is not yet available.

[1] Document not reproduced. *[Note by the Registry.]*

Mr. van Boven proposed amending operative paragraph 4 by replacing, in the 7th line, "an intensive report" by "through the Secretary-General a note".

Statements relating to the draft resolution and the amendments thereto were made by Mr. Alfonso Martínez, Mr. van Boven, Mr. Chernichenko, Ms Daes, Mr. Despouy, Mr. Diaconu, Mr. Joinet, Mr. Laghmari, Ms Mbonu and Ms Palley.

According to rule 50 of the Rules of Procedure, Mr. Despouy moved the closure of the debate on draft resolution E/CN.4/Sub.2/1989/L.58.

Mr. Alfonso Martínez opposed the motion.

The motion was accepted by 14 votes to 3, with 1 abstention.

A vote was taken on Mr. Joinet's sub-amendment, as amended by Mr. Sadi, on Mr. Diaconu's second amendment. The sub-amendment was adopted by 9 votes to 3, with 5 abstentions.

A vote was taken on Mr. Diaconu's second amendment, as amended. The amendment was adopted by 7 votes to 5, with 5 abstentions.

A vote was taken on Mr. Diaconu's first amendment. The amendment was rejected by 8 votes to 6, with 3 abstentions.

A vote was taken on Mr. Alfonso Martínez' amendment. The amendment was rejected by 11 votes to 5, with no abstention.

A vote was taken on Ms Palley's amendment, which was adopted by 11 votes to 3, with 2 abstentions.

At the request of Mr. Chernichenko, a separate vote was taken on the words "with appreciation" in the first line of the sixth preambular paragraph. The words were deleted by 7 votes to 6, with 4 abstentions.

At the request of Mr. Chernichenko, a separate vote was taken on operative paragraph 4. The paragraph was retained by 11 votes to 4, with 2 abstentions.

The attention of the Sub-Commission was drawn to an estimate of administrative and programme budget implications (E/CN.4/Sub.2/1989/L.75) of draft resolution E/CN.4/Sub.2/1989/L.58.

An explanation of vote before the vote was made by Mr. Diaconu.

The draft resolution, as a whole and as amended, was adopted by 12 votes to 4, with 2 abstentions.

Explanations of vote after the vote were made by Mr. Despouy and Mr. Joinet.

For the text of the resolution, as adopted, see Chapter II, Section A, resolution 1989/45.

At the same meeting, the Sub-Commission resumed consideration of draft resolution E/CN.4/Sub.2/1989/L.57.

Ms Daes proposed amending the draft resolution as follows:

— deleting, in the second preambular paragraph, second line, the remaining part of that paragraph after the parentheses;
— deleting in the first operative paragraph, first line, "not" and, in the third line, the phrase "and that it is therefore";
— replacing in the second operative paragraph, first line, "that" by "which";
— replacing in the third operative paragraph, first line, "withdrawn from circulation" by "circulated", deleting in the second line "because" and, in the third line, "determine the authority and prestige of the United Nations".

Referring to rule 65 (2) of the Rules of Procedure, Mr. Despouy moved to take no action on draft resolution E/CN.4/Sub.2/1989/L.57.

At the request of Mr. Alfonso Martínez, a roll-call was taken on the motion made by Mr. Despouy. The motion was adopted by 11 votes to 4, with 1 abstention. The voting was as follows:

In favour: Ms Bautista, Mr. van Boven, Ms Daes, Mr. Despouy, Mr. Eide, Mr. Hatano, Mr. Joinet, Ms Palley, Mr. Fix Zamudio, Mr. Carey and Mr. Türk.

Against: Mr. Alfonso Martínez, Mr. Chernichenko, Mr. Diaconu and Mr. Tian Jin.

Abstaining: Mr. Ilkahanaf.

The text of the draft resolution E/CN.4/Sub.2/1989/L.57 was as follows:

The Sub-Commission on Prevention of Discrimination and Protection of Minorities,

Recalling its resolution 1985/12 of 20 August 1989 entitled "Human rights and youth",

Bearing in mind the fact that the former Sub-Commission member, Mr. Dumitru Mazilu, submitted a document (E/CN.4/Sub.2/1989/41 and Add.1) which clearly shows that his obvious intention is to use his mission as Special Rapporteur for personal political purposes in relation with the authorities of his country, contrary to the mandate entrusted to him,

1. *Considers* that the document submitted by Mr. Mazilu does not meet the criteria of impartiality and objectivity that should govern the fulfilment by Special Rapporteurs of the task entrusted to them and that it is therefore inadmissible;

2. *Considers also* that the document does not correspond to the guidelines and practice of the Sub-Commission with regard to the content and structure of reports on particular topics;

3. *Decides* that the document will be withdrawn from circulation as a United Nations document, since it is likely, because of the way in which it was prepared, to undermine the authority and prestige of the United Nations;

4. *Decides* to consider, at the forty-second session, the question of the preparation of the report on the topic of "Human rights and youth" with a view to adopting the appropriate decision".

The status of the individual and contemporary international law

At the 40th meeting, on 1 September 1989, the Chairman took up for consideration draft resolution E/CN.4/Sub.2/1989/L.73, submitted by Mr. Despouy, Mr. Eide, Mr. Türk, Mr. Varela Quirós and Ms Warzazi.

The attention of the Sub-Commission was drawn to an estimate of administrative and progressive budget implications (E/CN.4/Sub.2/1989/L.74) of draft resolution E/CN.4/Sub.2/1989/L.73.

The draft resolution was adopted without a vote.

For the text of the resolution, as adopted, see Chapter II, Section A, resolution 1989/46.

E/CN.4/Sub.2/1989/SR.1
14 August 1989.

164. Summary Record of the 1st Meeting

Held at the Palais des Nations, Geneva,
on Monday, 7 August 1989, at 10.30 a.m.

Temporary Chairman: Mr. Bhandare
Chairman: Mr. Yimer

The meeting was called to order at 11.25 a.m.

OPENING OF THE SESSION

[Paras. 1-4 not reproduced]

5. *[The Temporary Chairman]* He recalled that in resolution 1985/12 the Sub-Commission had entrusted Mr. Mazilu with the preparation of a study on human rights and youth. In 1987, Mr. Mazilu had not attended the session of the Sub-Commission and had not submitted his report. In 1988, the Sub-Commission had adopted resolution 1988/37 expressing the view that Mr. Mazilu in his continuing capacity of Special Rapporteur enjoyed the privileges and immunities necessary for the performance of his duties, as provided in Section 22 of the Convention on the Privileges and Immunities of the United Nations of 13 February 1946, and requesting the Commission on Human Rights to urge the Economic and Social Council to request an advisory opinion from the International Court of Justice on the applicability of the relevant provisions of that Convention. That advisory opinion had been requested and would be circulated to members as soon as it was available. In the meantime, he had received a letter from Mr. Mazilu stating that he had been in captivity since 1986 and that his life and that of his wife were in danger. Mr. Mazilu had also submitted his study. The letter and the study would be discussed by the Sub-Commission under the appropriate agenda item.

[Paras. 6-39 not reproduced]

40. [*Mr. Martenson* (Under-Secretary-General for Human Rights)] The previous year, the Sub-Commission had stressed the urgent need to receive the report on human rights and youth from its Special Rapporteur, Mr. Dumitru Mazilu, and had requested the Government of Romania to co-operate with a view to enabling Mr. Mazilu to present his report. Since then, the matter had been taken up with representatives of the Government of Romania on numerous occasions both in Geneva and in New York, by the Secretary-General and also by himself. Unfortunately, no progress had been made in the Secretariat's attempts to consult with Mr. Mazilu with a view to assisting him in the preparation of his report. However, a text had now been received from him and as the Chairman announced it was being processed and would shortly be available to the Sub-Commission. By a resolution adopted at its first regular session of 1989, the Economic and Social Council had referred the question of the applicability of the Convention on the Privileges and Immunities of the United Nations to

the case of Mr. Mazilu to the International Court of Justice, as recommended by the Commission on Human Rights at its forty-fifth session.

[Para. 41 not reproduced]

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165. Summary Record of the 2nd meeting (held at the Palais des Nations, Geneva, on Tuesday, 8 August 1989, at 10 a.m.)[1] E/CN.4/Sub.2/1989/SR.2

E/CN.4/Sub.2/1989/SR.4
14 August 1989.

166. Summary Record of the 4th Meeting

Held at the Palais des Nations, Geneva,
on Wednesday, 9 August 1989, at 10 a.m.

Chairman: Mr. Yimer (later: Mr. van Boven)

REVIEW OF FURTHER DEVELOPMENTS IN FIELDS WITH WHICH THE SUB-COMMISSION HAS BEEN CONCERNED (item 4 of the provisional agenda)
(E/CN.4/Sub.2/1989/2-3, 5-7, 26 and 45)

[Paras. 66-75 not reproduced]

76. [*Mr. Martenson* (Under-Secretary-General for Human Rights)] Regarding the issue of the status of special rapporteurs, it would be remembered that, in resolution 1988/37, the Sub-Commission had requested the Secretary-General once more to approach the Government of Romania and invoke the applicability of the Convention on the Privileges and Immunities of the United Nations, and to request that Government to co-operate fully in the implementation of resolution 1988/37 by ensuring that Mr. Mazilu's report should be completed and presented to the Sub-Commission at the earliest possible date. It had further requested the Secretary-General, in the event that the Government of Romania did not concur in the applicability of the provisions of that Convention, to bring the difference between the United Nations and Romania immediately to the attention of the Commission at its forthcoming forty-fifth session. The Sub-Commission had also requested the Commission, in the latter event, to urge the Economic and Social Council, in accordance with General Assembly resolution 89 (I) of 11 December 1946, to request an advisory opinion from the International Court of Justice on the applicability of the relevant provisions of the Convention on the Privileges and Immunities of the United Nations to the case, within the scope of the Sub-Commission resolution.

77. In response to that request, the Secretary-General had presented a report to the Commission on Human Rights at its forty-fifth session, contained in document E/CN.4/1989/69. The Commission, in resolution 1989/37, had con-

[1] Document not reproduced. *[Note by the Registry.]*

curred with the view of the Sub-Commission that Mr. Mazilu, in his continuing capacity as Special Rapporteur, enjoyed the privileges and immunities necessary for the performance of his duties, as provided for in Article VI, Section 22, of the Convention on the Privileges and Immunities of the United Nations of 13 February 1946, to which Romania was a party. The Commission had recommended to the Economic and Social Council that it request, pursuant to Article 96, paragraph 2, of the Charter of the United Nations and in accordance with General Assembly resolution 89 (I), an advisory opinion from the International Court of Justice on the legal question of the applicability of Article VI, Section 22, of the said Convention to the case of Mr. Mazilu.

78. As he had said in his introductory statement at the opening of the session, the Economic and Social Council had submitted the question to the International Court of Justice, requesting a legal opinion on the matter.

E/CN.4/Sub.2/1989/SR.6
16 August 1989.

167. Summary Record of the 6th Meeting

Held at the Palais des Nations, Geneva,
on Thursday, 10 August 1989, at 10 a.m.

Chairman: Mr. Yimer

46. *[Mr. Bhandare]* An essential ingredient of the right of expression was the right to know. In that context, he asked himself how he could enforce his right to know about special rapporteurs, for example, the whereabouts of Mr. Mazilu. A letter had been received and Mr. Mazilu had sent his report in handwriting in two volumes, and that had made members of the Sub-Commission all the more anxious to know about him. The current exercise in futility must now come to an end. The Sub-Commission would shortly be receiving an advisory opinion from the International Court of Justice. He appealed to the Government of Romania to recognize that there was no prestige in keeping Mr. Mazilu away from the Sub-Commission and he requested the observer for that country to give a positive response at the end of the debate on the present item, and an assurance that Mr. Mazilu would be present to submit his study. He appealed also to the Under-Secretary-General for Human Rights, and through him to the Secretary-General, to make every effort to see that Mr. Mazilu attended the Sub-Commission to submit his report.

E/CN.4/Sub.2/1989/SR.8
18 August 1989.

168. Summary Record of the 8th Meeting

Held at the Palais des Nations, Geneva,
on Friday, 11 August 1989, at 10 a.m.

Chairman: Mr. Yimer

41. *[Mr. Varela Quirós]* Referring to the issue of special rapporteurs, he considered that, although the Sub-Commission must await the ruling of the Interna-

tional Court of Justice which had been requested by the Economic and Social Council, it should nevertheless not forget the fate of one of its Special Rapporteurs, namely, Mr. Mazilu. Independently of the legal issue, the Sub-Commission should reiterate its appeal to the Government of Romania that it should not only respect the rights of the Special Rapporteur and allow him to submit his report but also guarantee his full right to freedom of expression.

E/CN.4/Sub.2/1989/SR.10
22 August 1989.

169. Summary Record of the 10th Meeting

Held at the Palais des Nations, Geneva,
on Monday, 14 August 1989, at 10 a.m.

Chairman: Mr. Yimer

ORGANIZATION OF WORK *(continued)*

71. *Mr. Cisse* (Secretary of the Sub-Commission) said that the previous week the Sub-Commission had decided to invite two Special Rapporteurs to come to Geneva for the presentation and/or discussion of their reports. The Secretary-General had immediately dispatched cables to the persons concerned.

[Para. 72 not reproduced]

73. No response had been received from Mr. Mazilu. The Secretariat had attempted to establish telephone contact with Mr. Mazilu that morning, but without success. In addition, the United Nations Office in Bucharest had reported that morning its inability to deliver to Mr. Mazilu a copy of the telegram of invitation which had also been addressed to him through the United Nations Office in Bucharest.

The meeting rose at 1.05 p.m.

E/CN.4/Sub.2/1989/SR.26
1 September 1989.

169A. Summary Record of the 26th Meeting

Held at the Palais des Nations, Geneva,
on Thursday, 24 August 1989, at 10 a.m.

Chairman: Mr. Yimer (later: Mr. Alfonso Martínez)

ORGANIZATION OF WORK *(continued)*

30. *Mr. Eide* asked whether the secretariat had received any further information about when Mr. Mazilu would be coming to the Sub-Commission, in view

of the note verbale of 15 August 1989 from the Permanent Mission of Romania (E/CN.4/Sub.2/1989/53) which he had found rather strange.

31. The Sub-Commission had been informed earlier that Mr. Mazilu was suffering from heart problems. The letter from the Permanent Mission of Romania indicated that he was suffering from mental problems. Although Mr. Mazilu might be a dissident it did not follow that he was mentally ill. He was troubled that the Special Rapporteur was being retained in his country on the pretext of mental illness.

32. *Mr. Martenson* (Under-Secretary-General for Human Rights) said that he had nothing to add to the information already reported to the Sub-Commission. The Centre for Human Rights had tried to contact Mr. Mazilu directly and through the United Nations Office in Bucharest, but without success.

33. The first time he had seen any reference to mental illness was in the note verbale from the Permanent Mission of Romania.

34. *Mr. Eide* said that he still assumed that Mr. Mazilu would be with the Sub-Commission when it dealt with item 15 *(b)* of its agenda. If he were not, then a very strong reaction would be required by the Sub-Commission.

35. *Mr. Radu* (Observer for Romania) asked whether agenda item 15 *(b)* was under discussion, since he wished to make some comments on the item.

36. *The Chairman* replied that the Sub-Commission had not yet begun its consideration of item 15 *(b)*.

37. *Mr. Bhandare* said that there was a contradiction between the explanation given by the Romanian Government the previous year that Mr. Mazilu was suffering from heart trouble and the fact that Mr. Mazilu had produced a logical and rational handwritten report in two volumes, which would not have been possible had he been suffering either from heart trouble or mental illness.

38. He believed that Mr. Mazilu was being retained without adequate reason. The Sub-Commission must find a solution to the problem before the end of the session and secure Mr. Mazilu's presence at its deliberations without delay.

39. *The Chairman* pointed out that item 15 *(b)* of the agenda was the appropriate item for the discussion of Mr. Mazilu's report. The relevant discussion should take place at that time and he therefore requested members of the Sub-Commission not to open a debate on that issue.

40. *Mr. Diaconu* urged members not to launch into far-fetched theories; such a course would be dangerous.

41. *Mr. Joinet* said that he would be prepared to take up agenda item 15 *(b)* immediately. The place scheduled for it towards the tail end of the agenda laid the Sub-Commission open to charges of not wishing to discuss it.

169B. Summary Record of the 34th meeting (held at the Palais des Nations, Geneva, on Wednesday, 30 August 1989, at 10 a.m.)[1] E/CN.4/Sub.2/1989/SR.34

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[1] Document not reproduced. *[Note by the Registry.]*

E/CN.4/Sub.2/1989/SR.35
20 septembre 1989.

169C. Compte rendu analytique de la première partie de la 35e séance

tenue au Palais des Nations, à Genève,
le mercredi 30 août 1989, à 15 heures

Président: M. Yimer

1. *M. Diaconu*, intervenant sur le point 15 *b)*, rappelle que c'est sur l'initiative de la Roumanie que l'ONU a commencé à examiner en 1960 les problèmes concernant la jeunesse, ce qui a conduit à l'adoption de la Déclaration concernant la promotion parmi les jeunes des idéaux de paix, de respect mutuel et de compréhension entre les peuples en 1965, à la proclamation de l'Année internationale de la jeunesse en 1985 et à une conférence internationale sur ce sujet la même année.

2. Le rapport sur les droits de l'homme et la jeunesse demandé par la Sous-Commission dans sa résolution 1985/12 devait être un rapport thématique, établi conformément aux directives énoncées par la Sous-Commission dans sa résolution B, publiée dans le rapport de la Sous-Commission du 5 février 1954 (E/CN.4/Sub.2/157) à propos de l'étude sur les mesures discriminatoires dans le domaine de l'enseignement, et étendues ultérieurement à tous les autres rapports et études.

3. Or, le rapport publié par le Secrétariat au titre du point 15 *b)* de l'ordre du jour de la Sous-Commission (E/CN.4/Sub.2/1989/41 et Add.1) n'est pas conforme à ces directives puisqu'il ne traite pas de la question à l'examen sur le plan mondial et se réfère à plusieurs reprises à la situation dans un pays déterminé, n'indique pas les tendances d'ordre général ni les facteurs à l'origine de ces tendances et leur nature, n'est pas concret et objectif et contient toute une série d'allégations diffamatoires à l'égard d'un pays, de sa politique intérieure et de son système politique et social. Ce rapport s'inscrit de toute évidence dans le cadre de la campagne politique menée par certains milieux contre la Roumanie, qui n'a rien à voir avec la réalité ni avec les droits de l'homme. L'additif au rapport fait d'ailleurs ressortir les objectifs politiques de ce document, et sa diffusion va à l'encontre des dispositions de la résolution 664 (XXIV) du Conseil économique et social, selon laquelle les monographies par pays ne doivent pas être normalement publiées en tant que documents, toute exception à cette règle devant être approuvée par le Conseil lui-même et viser bien sûr des études concernant de nombreux pays. En outre, ce rapport est établi en termes injurieux qui sont inacceptables pour la Sous-Commission. Si on le compare à tous les rapports et études présentés à la Sous-Commission, on constate aisément qu'il s'agit en fait d'un pamphlet politique et d'une collection de slogans reflétant une philosophie politique partisane.

4. Un tel rapport est de nature à embarrasser beaucoup de membres de la Sous-Commission et à mettre en jeu la crédibilité de celle-ci. C'est pourquoi, M. Diaconu aimerait savoir pourquoi le centre pour les droits de l'homme ne s'est pas assuré que ce rapport correspondait bien aux directives établies par la Sous-Commission avant de le distribuer, pourquoi le Secrétariat n'a pas jugé bon, suivant la pratique établie, de demander à l'Etat Membre concerné de formuler des observations sur ce document, et pourquoi, s'il connaît les directives de la Sous-Commission et la résolution 664 (XXIV) du Conseil économique et social, il n'en a pas tenu compte, comme il aurait dû le faire et a fait distribuer ce document.

5. Il est absolument indispensable de réaffirmer les directives établies par la Sous-Commission concernant la nature, le contenu et l'économie des rapports et des études qui lui sont soumis ou d'en élaborer de nouvelles et de rappeler que tous les rapporteurs et le centre pour les droits de l'homme sont tenus de les respecter.

6. *M. Martenson* (Secrétaire général adjoint aux droits de l'homme) dit qu'il a déjà eu l'occasion de faire part de ses observations à l'égard du rapporteur spécial chargé par la Sous-Commission d'établir un rapport sur les droits de l'homme et la jeunesse au cours de diverses interventions devant la Sous-Commission en 1987, 1988 et pendant la session en cours, ainsi que dans la note du Secrétaire général publiée sous la cote E/CN.4/1989/69. Il rappelle en outre que la Cour internationale de Justice doit se prononcer sur le principe en cause.

7. A son avis, certaines des remarques faites par M. Diaconu ainsi que les observations formulées par la mission permanente de la République socialiste de Roumanie dans sa note verbale du 15 août 1989 (E/CN.4/Sub.2/1989/53) font ressortir une méconnaissance du concept de fonction publique internationale et des responsabilités que cela implique. Il va de soi que le Secrétariat doit faire preuve à tout moment de neutralité, d'impartialité. L'indépendance des fonctionnaires internationaux à l'égard des gouvernements ou de toute autorité extérieure à l'Organisation est d'ailleurs établie par l'article 100 de la Charte des Nations Unies. Leur tâche consiste en priorité à s'acquitter pleinement, fidèlement et efficacement des mandats qui leur sont confiés par des organes intergouvernementaux ou des organes d'experts comme la Sous-Commission.

8. Cette neutralité est un objectif qui n'est ni simple ni facile. Elle constitue un défi permanent pour tous les fonctionnaires internationaux, et est aussi au cœur de tous les efforts déployés par l'ONU en faveur de la paix, de la justice et de la dignité humaine. Comme le soulignait Dag Hammarskjöld, il s'agit essentiellement, en définitive, d'une question d'intégrité et si l'intégrité au sens du respect du droit et de la vérité devait conduire le fonctionnaire international à entrer en conflit avec tel ou tel intérêt, ce conflit serait alors le signe de sa neutralité et non de son incapacité à rester neutre et est compatible et non pas incompatible avec ses devoirs en tant que fonctionnaire international.

[Par. 9-24 non reproduits]

25. *M. Diaconu*, prenant la parole pour une motion d'ordre, rappelle qu'il a posé des questions au Secrétariat et qu'il souhaiterait qu'on y réponde.

26. *M. McCarthy* (Secrétariat), répondant aux questions posées par M. Diaconu au sujet du rôle du Secrétariat dans l'établissement et la distribution du rapport dont se trouve saisie la Sous-Commission au titre du point 15 *b)* (E/CN.4/Sub.2/1989/41 et Add.1), déclare que le Secrétariat a tenu compte des différentes résolutions adoptées par la Sous-Commission concernant ses méthodes de travail, de même que des deux résolutions citées par M. Diaconu, ainsi que des directives revisées de 1974. Quant aux directives formulées par la Sous-Commission pour l'établissement des rapports, il est à noter que celles-ci s'adressent aux rapporteurs spéciaux et que ce sont donc ces derniers qu'il convient d'interroger au sujet de leur application.

27. Le Secrétariat connaît les dispositions du règlement intérieur et les suggestions de la Commission et de la Sous-Commission, et il en tient le plus grand compte dans ses contacts avec les rapporteurs spéciaux, lorsqu'il les aide à planifier leurs rapports, à recueillir des renseignements, à rédiger aussi, si ceux-ci le souhaitent, ainsi qu'à distribuer le document qu'ils ont été chargés de préparer.

28. Le Secrétaire général a présenté à la Commission des droits de l'homme

le document E/CN.4/1989/69, faisant ressortir comment il s'est efforcé de fournir une assistance à M. Mazilu, conformément à la demande qui lui avait été faite par la Commission des droits de l'homme et le Conseil économique et social. Le Secrétariat a également tenté d'établir des contacts en vue de permettre au rapporteur de présenter son étude. Comme chacun sait, ses efforts n'ont malheureusement pas abouti.

29. Ce n'est pas la première fois que la question du contenu d'un rapport soulève une controverse au sein de la Sous-Commission, et M. McCarthy se réfère à cet égard aux discussions qui ont eu lieu en 1985 et qui sont reflétées dans le rapport de la Sous-Commission à la Commission des droits de l'homme (E/CN.4/1986/5), dans lequel on voit clairement que le contenu d'un rapport et l'angle sous lequel la question étudiée est abordée sont laissés à l'entière discrétion du rapporteur spécial.

30. M. McCarthy se réfère enfin au règlement intérieur du Conseil économique et social, dont l'article 26 *b)* prévoit que le Secrétariat «reçoit, traduit et distribue les documents». Comme on le voit donc, les réponses aux questions posées par M. Diaconu peuvent être trouvées dans les principes et la pratique de la Sous-Commission elle-même. Quant à la communication préalable des rapports aux pays intéressés pour commentaires éventuels, il s'agit là, bien entendu, d'une question qui relève entièrement du rapporteur spécial.

31. *M. Diaconu* n'est pas satisfait par les réponses qui ont été fournies par le Secrétariat. En effet, un document qui calomnie un pays de façon arbitraire a été mis en circulation en tant que document de la Sous-Commission, ce qui est contraire aux buts et aux principes de la Charte des Nations Unies, organisation de coopération et non de confrontation. Cela crée en outre un dangereux précédent pour les futurs rapporteurs spéciaux. Il est évident que ceux qui encouragent la diffusion de tels documents, en dépit des règles et des pratiques des Nations Unies, utilisent l'Organisation à des fins qui leur sont propres et engagent leur responsabilité. L'ONU n'est pas une maison d'édition pouvant publier n'importe quoi même si l'auteur est un rapporteur spécial. Le Secrétariat ne peut donc pas se soustraire à sa responsabilité en invoquant sa neutralité ou l'impossibilité d'établir des contacts. L'auteur de ce document — et M. Diaconu doute qu'il soit réellement l'auteur de tout ce rapport, qui ne ressemble à aucun des rapports examinés par la Sous-Comission — a agi ou bien sous l'effet de la maladie, ou bien à des fins politiques personnelles. Il en résulte que le document en question n'est absolument pas conforme aux règles concernant le contenu et la forme des rapports présentés à la Sous-Commission.

32. *M. Eide* dit, avec tout le respect qu'il a pour M. Diaconu, que celui-ci met la charrue avant les bœufs comme le pensent sans doute aussi les autres membres de la Sous-Commission qui ont certainement en mémoire les différents épisodes de l'histoire de ce rapport.

33. Il est probable qu'à mesure qu'il avançait dans son travail, M. Mazilu se soit aperçu que, pour étudier la question des droits de l'homme et la jeunesse, il fallait avant tout reconnaître aux jeunes le droit de penser et de s'exprimer librement, de critiquer les traditions et les approches choisies par leurs aînés et de rechercher des solutions novatrices et des voies nouvelles. L'essentiel, donc, comme l'a bien noté M. Mazilu, est la liberté d'expression. M. Eide reconnaît que l'étude de M. Mazilu est assez spéciale mais estime qu'il faut tenir compte du fait qu'elle reflète la situation dans laquelle celui-ci se trouve. Tous les rapporteurs spéciaux doivent accepter les critiques des autres experts, ce qui leur permet d'approfondir leur pensée. M. Mazilu aurait dû venir à Genève en 1987, puis en 1988, pour discuter de son étude avec les membres de la Sous-Commission, qui lui auraient sans doute fait des commentaires et suggestions,

dont il aurait pu ensuite tenir compte. Malheureusement, il ne lui a pas été possible de venir et les efforts de la Sous-Commission pour obtenir du Gouvernement roumain qu'il revienne sur son interdiction ont été vains.

34. M. Eide est surpris de la réaction de M. Diaconu, qui a porté uniquement sur certains aspects de l'étude finale, sans tenir aucun compte des conditions dans lesquelles le rapporteur spécial a travaillé. Il continue à espérer que la Sous-Commission pourra discuter de cette étude directement avec M. Mazilu, peut-être à sa session suivante, lorsque la Cour aura rendu un avis consultatif, qui sera sans doute favorable à la Sous-Commission. M. Eide s'abstient donc pour le moment de tout commentaire sur les nombreuses bonnes idées contenues dans le rapport considéré et sur certaines qui lui semblent peut-être critiquables.

35. *M. van Boven* juge étrange que le Secrétariat soit blâmé par un expert au sujet d'un document, alors que la responsabilité incombe entièrement au Gouvernement roumain, qui n'a autorisé M. Mazilu ni à se rendre à Genève afin de tenir compte d'éventuelles critiques ou suggestions, ni à maintenir des contacts avec le Secrétariat pour des consultations. Il serait en fait contraire à l'esprit même du travail des rapporteurs que le Secrétariat ne puisse pas discuter des questions traitées avec ceux-ci.

36. *M. Joinet* partage entièrement le point de vue exprimé par MM. Eide et van Boven. Il demande lui aussi de reporter l'examen du rapport de M. Mazilu à la session suivante, car il est impensable d'examiner ce document en l'absence de son auteur.

37. *M. Despouy* appuie MM. Eide, van Boven et Joinet et rappelle qu'en tant que président de la Sous-Commission, l'année où M. Mazilu aurait dû venir présenter son rapport préliminaire, il n'a épargné aucun effort à cet effet. Il a fait envoyer des télégrammes, suggéré d'entrer en contact avec le rapporteur spécial et prié le Secrétaire général d'intervenir. Aucune de ces initiatives n'a cependant abouti. M. Despouy constate que la Sous-Commission se trouve devant la situation paradoxale où le Secrétariat est critiqué pour une action dont il devrait au contraire être félicité. Pour sa part, il tient à dire que toutes les initiatives qui ont été prises alors qu'il était président l'ont été sous son entière responsabilité et il remercie une fois encore le Secrétariat pour la manière dont il s'est acquitté des tâches qui lui étaient confiées.

[Par. 38-62 non reproduits]

63. *[M. Bhandare]* A propos du point 15 *b*), et du rapport de M. Mazilu (E/CN.4/Sub.2/1989/41 et Add.1), M. Bhandare dit que la Sous-Commission ne doit pas créer un précédent en examinant ce rapport en l'absence de son auteur. Il regrette vivement que des critiques aient été adressées au Secrétariat et rappelle que c'est lui qui a proposé en 1987, Année internationale de la jeunesse, de confier cette étude à M. Mazilu. Il propose formellement que l'examen du rapport de M. Mazilu soit reporté à la session suivante et que la question traitée dans le rapport soit maintenue à l'ordre du jour de la Commission jusqu'à ce que M. Mazilu soit en mesure de présenter lui-même son rapport, et demande que sa proposition soit mise aux voix si nécessaire.

[Par. 64-75 non reproduits]

76. *M. Chernichenko*, se référant au rapport de M. Mazilu (E/CN.4/Sub.2/1989/41 et Add.1), constate que les opinions qui y sont exprimées sont essentiellement d'ordre politique, ce qui est regrettable étant donné

que la Sous-Commission s'efforce au maximum de dépolitiser ses débats. Il comprend la situation particulière de M. Mazilu, mais il estime qu'un rapporteur spécial doit pourvoir être au-delà de certaines contingences. Par ailleurs, sur le plan de la procédure, la Sous-Commission devrait attendre, pour examiner le rapport de M. Mazilu, que la Cour internationale de Justice ait rendu l'avis consultatif qui lui a été demandé à ce sujet.

[Par. 77-79 non reproduits]

80. *[M. Türk]* Le rapport de M. Mazilu (E/CN.4/Sub.2/1989/41) suscite naturellement quelques réflexions, mais il importe d'indiquer clairement que tout rapport doit obligatoirement être examiné en présence du rapporteur spécial et que les observations doivent lui être adressées directement. En conséquence, l'examen du rapport de M. Mazilu devrait être reporté à la session suivante de la Sous-Commission à laquelle il faut espérer que M. Mazilu pourra participer.

[Par. 81-84 non reproduits]

E/CN.4/Sub.2/1989/SR.39
19 September 1989.

170. Summary Record of the 39th Meeting

Held at the Palais des Nations, Geneva,
on Friday, 1 September 1989, at 10 a.m.

Chairman: Mr. Yimer

18. *Mr. Radu* (Observer for Romania) said that under agenda item 15 *(b)* the Centre for Human Rights had circulated two documents under symbols E/CN.4/Sub.2/1989/41 and 41/Add.1 purporting to be a report presented by the former Romanian expert Mr. Dumitru Mazilu. From a cursory perusal it could be seen that the document was a wild, incoherent, vindictive and defamatory attack on a member State, and completely devoid of truth. The most basic standards regarding preparation and publication of documents, even in the context of the strictest procedures admitted by States in the field of human rights and by general practice, required that a text containing such allegations against a member State, its political and social system and its leaders should be rejected without further action, and in no circumstances published.

19. Romania had informed the Sub-Commission promptly that Mr. Mazilu had fallen ill, had retired on 1 December 1987 and was no longer capable of performing satisfactorily the task that had been entrusted to him. His medical file had been made available to the Centre for Human Rights.

20. The content of the so-called report and the way in which Mr. Mazilu had interpreted his task as Special Rapporteur for human rights and youth fully confirmed that he was in no state to carry out that task. Moreover, he was attempting to turn his mission to political ends, which was unacceptable.

21. The fact that the Centre had accepted and worked on the text in question — which did not constitute a report under existing criteria, but rather an at-

tempt to vilify a member State — was both surprising and incomprehensible. It raised serious doubts regarding the whole question of impartiality, in the context of the campaign waged against Romania by certain political and ideological groups.

22. It was clear that the publication of the material submitted by Mr. Mazilu as the work of a "special rapporteur" appointed by the Sub-Commission had serious repercussions on the institution of "special rapporteur". A precedent had been created whereby that institution, which had initially been conceived as an instrument for objective analysis of a topic of international interest, was transformed into an opportunity for an individual to attack his own country for reasons unrelated to the theme of the report. For that reason, the so-called report must be rejected as contravening United Nations standards in the matter and as profoundly injurious to the United Nations and its authority.

23. Without going into details, he wished to stress that all the derogatory allegations levelled against Romania in the report were completely false, and reflected well-known calumnies fabricated and circulated by hostile elements in the media. The quotations contained in the note verbale from the Permanent Mission of Romania distributed under symbol E/CN.4/Sub.2/1989/53 revealed the differences and contradictions in Mr. Mazilu's opinions before and after the termination of his mandate as a member of the Sub-Commission.

24. As for Mr. Mazilu's personal circumstances, he continued to live in retirement for health reasons and was in receipt of a decent pension. He underwent an annual medical examination, in accordance with Romanian law, his next examination being scheduled for November 1989. He enjoyed freedom of movement and was living at his home in Bucharest. All references to "captivity", "disappearance", "persecution" and so forth were utterly without foundation. He had twice been admitted to hospital, on both occasions during a period when he had held a senior official post at the Ministry of Foreign Affairs. Both admissions to hospital and his retirement had been at his own request.

25. The content of the so-called report, together with other "messages" transmitted by Mr. Mazilu, proved that, through his conduct, he had become a potential threat to the interests of the Romanian State. That fact was largely attributable to the way in which various diplomatic missions in Bucharest had manipulated him, despite his state of health, to the press campaign that had been unleashed, and to the fact that no account had been taken in the Sub-Commission and other United Nations bodies of the official information made available by the Romanian authorities, revealing his true state of health. All those circumstances had contributed to the present situation.

26. In view of his current condition, the functions and duties he had exercised in the past, his behaviour and the way he was manipulated by various groups, Mr. Mazilu's presence abroad during the current period would be prejudicial to the Romanian State. Both national laws and international human rights conventions established various rights and freedoms, but also obligations and conditions under which such rights could be exercised. Rights could not be exercised against the security of States, public order, public morals or the rights of other persons. Under the law of Romania — and indeed of other States — a passport could be withheld from nationals who, by their departure abroad, might harm the interests of the State.

27. Mr. Mazilu had not, to their knowledge, requested permission from the Romanian authorities to go to Geneva. In other words, he had not requested any travel document other than the diplomatic passport under which he had travelled until his retirement in December 1987. But because of his conduct, he was subject to the aforementioned law. The Romanian authorities thus felt

obliged to identify the possible sources of provocation in the campaign associated with Mr. Mazilu. On the basis of the scanty information available thus far, he wished to stress that the Romanian Party had not yet found answers to a number of factual and procedural questions regarding the origin, preparation and distribution of the so-called report. Who, for example, had requested the separate distribution of an addendum entitled "A special view on the Romanian case", and why? Everyone knew that no special report on youth in Romania had been requested. The Sub-Commission must ask itself one basic, clear and simple question: was it permissible to use the noble idea of a report intended as a global approach to a very specific subject in the socio-humanitarian field as the basis for distributing a document which was manifestly defamatory *vis-à-vis* a member State, and which failed to comply with the most basic standards and practice in the matter?

28. His delegation requested the immediate withdrawal of documents E/CN.4/Sub.2/1989/41 and 41/Add.1. It was for the Sub-Commission to examine the situation, draw appropriate conclusions and act accordingly.

[Paras. 29-37 not reproduced]

38. [*Mr. Green* (Observer for the United States of America)] Human rights violations and disrespect for the rights of religious and ethnic minorities had been the root cause of more suffering during the twentieth century than the scourge of war. The Sub-Commission could play a role in reducing the number and severity of abuses. It could do so by expanding the frontiers of mankind's common understanding of international human rights obligations and by contributing to the formation of effective national, regional and international institutions to protect human rights. It could do so also by investigating and speaking out forcefully on the most flagrant contemporary human rights abuses. No more glaring example of individual cases of human rights abuse could be given than the treatment of the Sub-Commission's Special Rapporteur on human rights and youth, Mr. Mazilu, by the Government of Romania. He felt sure that the Sub-Commission would speak out forcefully in calling on Romania to fulfil its international obligations.

[Paras. 39-44 not reproduced]

47. *[Mrs. Daes]* She noted that Mr. Mazilu had submitted a report to the Sub-Commission and that the Sub-Commission had considered it. A majority of members had commented quite favourably on the report, and a draft resolution on it had been submitted for the Sub-Commission's consideration. The complaints of the observer for Romania were not valid or relevant. The report should be updated and the Romanian Government should enable Mr. Mazilu to come to Geneva and present his updated report to the Sub-Commission. She had worked on the protection of mentally-disturbed persons in the past and was concerned at allegations that Mr. Mazilu might be mentally ill. It was important to avoid the administration of drugs for political purposes, as the physical and mental integrity of the individual could be adversely affected thereby. She trusted that such substances had not been used on Mr. Mazilu; she would continue to follow the matter with concern.

[Paras. 48-56 not reproduced]

57. *[Mrs. Ksentini]* With reference to the report by Mr. Mazilu, she expressed surprise that such a report should have been extended to cover conditions in a

particular country. In her view, the Sub-Commission should not consider the report; however, if it decided to do so, it should study the report in conjunction with the note verbale transmitted by the Government of Romania (E/CN.4/Sub.2/1989/53).

171.	Summary Record of the first part (public) of the 40th meeting (held at the Palais des Nations, Geneva, on Friday, 1 September 1989, at 3 p.m.)[1]	E/CN.4/Sub.2/1989/SR.40
171A.	Summary Record of the second part of the 40th meeting (held at the Palais des Nations, Geneva, on Friday, 1 September 1989, at 6.40 p.m.)[1]	E/CN.4/Sub.2/1989/SR.40/Add.1
171B.	Summary Record of the third part (closed) of the 40th meeting (held at the Palais des Nations, Geneva, on Friday, 1 September 1989, at 8.25 p.m.)[1]	E/CN.4/Sub.2/1989/SR.40/Add.2
171C.	Summary Record of the fourth part (public) of the 40th meeting (held at the Palais des Nations, Geneva, on Friday, 1 September 1989, at 8.45 p.m.)[1]	E/CN.4/Sub.2/1989/SR.40/Add.3

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172. Statement of Mr. I. Diaconu, the Expert from Romania, made on 30 August 1989[2]

Translated from French

Mr. Chairman,

1. Sub-Commission resolution 1985/12 of 29 August 1985, entitled "Human rights and youth", requested the preparation of "a report on human rights and youth analysing the efforts and measures for securing the implementation and enjoyment by youth of human rights, particularly the right to life, education and work". As that same resolution stated, the purpose was "to facilitate . . . discussion of the topic".

I should like to recall in passing that the problems concerning youth were placed on the agenda of the United Nations in 1960, at the initiative of Romania. That led to the adoption in 1965 of the Declaration on the Promotion among Youth of the Ideals of Peace, Mutual Respect and Understanding between Peoples, the proclamation in 1985 of the International Youth Year, and the holding of a World Conference that same year.

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[1] Document not reproduced. *[Note by the Registry.]*

[2] This text was communicated to the Office of Legal Affairs from the Centre for Human Rights. The *Summary Records* in which it appears are not yet available.

2. What was required, in the Sub-Commission's view, was a report by subject or topic, as in the case of many reports on other subjects.

The Sub-Commission drew up rules and guidelines governing the nature and content of such reports.

In resolution B, contained in its report of 5 February 1954 (E/CN.4/Sub.2/157) on the future study of discrimination in the field of education, the Sub-Commission decided as follows:

(a) Under the heading "*Production of a report*", the Sub-Commission stated that:

"(i) it should be undertaken on a global basis and with respect to all the grounds of discrimination condemned by the Universal Declaration of Human Rights, but special attention should be given to instances of discrimination that are typical of general tendencies and instances where discrimination has been successfully overcome;

(ii) the report should be factual and objective and should deal with the *de facto* as well as the *de jure* situation regarding discrimination in education;

(iii) the report should point out the general trend and development of legislation and practices with regard to discrimination in education;

(iv) the report should also point out the factors which in each instance have led to the discriminatory practices, pointing out those which are economic, social, political or historic in character and those resulting from a policy evidently intended to originate, maintain or aggravate such practices;

(v) the report should be drawn up not only to serve as a basis for the Sub-Commission's recommendations, but also with a view to educating world opinions;

(vi) in drawing up the report, full advantage should be taken of the conclusions already reached with respect to discrimination by other bodies of the United Nations or by the specialized agencies."

(b) Under the heading "*Method of Production*", it stated that:

"(i) A special rapporteur shall draw up a draft report along the lines laid down in paragraph *(a)*, bearing in mind the observations made in the debates by members of the Sub-Commission during its fifth and sixth sessions . . ."

As to setting a deadline, the Sub-Commission stated:

"Should he fail to complete his work for that date, he shall submit a progress report in which he shall give an account of the material assembled and of the methods adopted or which he intends to adopt in carrying out his work.

In addition to the material and information which he is able to collect and which he shall embody in his report in the form of an analysis, the special rapporteur shall include such conclusions and proposals as he may judge proper to enable the Sub-Commission to make recommendations for action."

The Sub-Commission decided that those guidelines would apply, *mutatis mutandis*, to subsequent studies and reports.

Thus, in resolution C, contained in its report of 31 January 1956 (E/CN.4/Sub.2/177), the Sub-Commission stated, with regard to further studies entrusted to some of its members:

> "2. *Decides* moreover that the Special Rapporteurs, in carrying out these studies, shall be guided, as appropriate, by the general instructions in the resolution concerning the study of discrimination in the matter of education adopted by the Sub-Commission."

In short, such reports or studies should deal with the question on a global basis, should be factual and objective, should indicate general tendencies and the factors underlying those tendencies and their nature, and should serve as a basis for the recommendations while taking full advantage of the conclusions already reached by United Nations bodies. The method indicated had been designed to ensure the implementation of those guidelines.

3. With regard to the various thematic studies or reports, the problem of country studies on each subject had already arisen during the years 1958-1964. For the report on discrimination in religious rights and practices, more than 50 country studies were drawn up and were sent to Governments for their comments. The Sub-Commission took no decision with regard to their publication.

The question was submitted to the Economic and Social Council which, in its resolution 664 (XXIV) of 1957, decided:

> "That with regard to the programme of studies of discrimination on which the Sub-Commission on the Prevention of Discrimination and the Protection of Minorities is engaged, the country reports utilized in the preparation of these studies be not normally issued as documents."

Therefore, if a rapporteur utilizes country studies, he should first begin with studies concerning a large number of countries.

Secondly, such studies should not normally be published as documents, in order not to infringe the aforementioned resolution of the Economic and Social Council. Any exception to this rule should be approved by the Council itself and, of course, involve studies relating to a number of countries.

4. However, what the Secretariat has distributed as a report under agenda item 15 *(b)* is in no way in keeping with those guidelines.

It is not a study made on a global basis, with consideration of the situation in all countries. It repeatedly refers to one country; it does not indicate general tendencies, nor is it factual and objective.

The report contains a list of defamatory statements and accusations regarding one country, its internal policy and its political and social system — allegations so fanciful and irrational that I do not even see fit to make any comments. Even before the preparation of the paper, those allegations had been spread by the radio and other media of certain circles which had launched a political campaign against Romania, a campaign having nothing to do with human rights. The paper is clearly part of that campaign.

The so-called addendum reveals even more clearly the political campaign objectives which determined the content of the paper and led to its distribution, in violation of the aforementioned Council resolution.

Similarly, the paper contains a whole series of insulting and abusive expressions which we have rejected even in our oral statements. Under the confidential procedure set forth in Council resolution 1503 (XLVIII), communications containing abusive language are inadmissible.

That is all the more reason why a study or report submitted to the Sub-Commission should meet such a requirement.

In the final analysis, except for a few passages, the paper is a political tract, a collection of slogans.

It suffices to compare the paper with all the reports and studies submitted to

It suffices to compare the paper with all the reports and studies submitted to the Sub-Commission, such as the reports prepared by Mrs. Daes on the individual and international law, by Mr. Eide on racial discrimination, by Mr. van Boven on religious freedoms, by Mrs. Warzazi on traditional practices, and many others.

None of those reports was based on the rapporteur's personal view regarding the situation in a particular country, whether his or her own or another; none of them is a collection of slogans or the expression of a biased political philosophy.

5. The paper in question does not meet the requirements for the preparation of reports and studies to be submitted to the Sub-Commission.

It does not help us, and it is likely to embarrass many members of the Sub-Commission and jeopardize that body's credibility. It represents a distortion of the concept of reports and studies on human rights, since it pursues other objectives.

Thus, many questions arise in this regard:

(a) Was it not the responsibility of the Centre for Human Rights to ensure that the papers which it circulated as reports or studies were in keeping with the guidelines laid down by the Sub-Commission regarding the nature and content of such reports or studies?

(b) As is well known, it is the standard practice of the Commission on Human Rights to send the commentaries regarding individual States contained in thematic reports to the States concerned for their observations which are reflected in the report.

Why did the Secretariat not deem it necessary, in this case, to solicit the comments of the Member State concerned?

(c) If the Centre for Human Rights was aware of those guidelines and had the obligation to adhere to them, why did it circulate the paper in this form?

(d) Question for the Sub-Commission:

It is absolutely necessary to reaffirm the guidelines laid down by the Sub-Commission on the nature, content and format of reports or studies submitted to it, on the basis of the guidelines laid down in the years 1954-1960.

All rapporteurs, as well as the Centre for Human Rights, should adhere to those guidelines, so that we are no longer obliged to consider papers unworthy of that name.

173. Statement of the Under-Secretary-General for Human Rights, Made on 30 August 1989[1]

Mr. Chairman, distinguished members,

In my capacity as the representative of the Secretary-General, I do not feel it would be useful or appropriate to engage in a lengthy debate on the issue raised by the expert from Romania. My observations with regard to the Special Rapporteur appointed by the Sub-Commission to prepare a report on Human Rights and Youth are on record in the statements I made before this body in 1987, 1988 and again this year as well as the Secretary-General's report on the issue in E/CN.4/1989/69.

[1] This text was communicated to the Office of Legal Affairs from the Centre for Human Rights. The *Summary Records* in which it appears are not yet available.

I will therefore not rehearse again the detailed history of this case. The principle at stake, of course, is of great significance and will be considered by the community of nations' highest legal body, the International Court of Justice. But I believe that some of the remarks just made, as well as in the note verbale from the Permanent Mission of the Socialist Republic of Romania, E/CN.4/Sub.2/1989/53, denote a misapprehension of the concept of an international civil service, and of the responsibilities which that service implies. It is axiomatic that an international Secretariat such as ours must at all times be neutral, factual, objective and unbiased. We are guided by the purposes and principles laid down in the Charter and, to recall its Article 100, are strictly enjoined from paying any heed to governments or to any other authority external to the Organization.

Our priority task is to implement — fully, faithfully and effectively — the mandates given us by the intergovernmental or expert bodies such as this.

Such neutrality is of course no facile goal nor simple code, but rather a constant challenge to the members of the international civil service. It is one which my colleagues and I in the Centre for Human Rights exert our best efforts to meet. And it is a challenge which has always lain at the heart of the United Nations endeavour for peace, justice and human dignity. As a compatriot of mine and the second Secretary-General — Dag Hammarskjöld — noted some 28 years ago:

> "At the final last, this is a question of integrity, and if integrity in the sense of respect for law and respect for truth were to drive the international civil servant into positions of conflict with this or that interest, then that conflict is a sign of his neutrality and not of his failure to observe neutrality — then it is in line, not in conflict with his duties as an international civil servant."

174. Draft resolution submitted by Mr. van Boven, Ms Daes, Mr. Eide, Mr. Fix-Zamudio, Mr. Hatano, Mr. Ilkahanaf, Mr. Joinet, Ms Palley, Mr. Treat and Mr. Varela, The report on human rights and youth presented by Mr. Dumitru Mazilu[1] — E/CN.4/Sub.2/1989/L.58

E/CN.4/Sub.2/1989/L.11/Add.7
13 September 1989.

175. Draft Report on the Forty-first Session

Rapporteur: Mr. Ribot Hatano

Resolution 1989/45. The Report on Human Rights and Youth Prepared by Mr. Dumitru Mazilu

The Sub-Commission on Prevention of Discrimination and Protection of Minorities,

[1] Document not reproduced. *[Note by the Registry.]*

Recalling General Assembly resolution 36/29 of 13 November 1981, 37/49 of 3 December 1982, 38/23 of 22 November 1983, 41/98 of 4 December 1986 and 43/94 of 8 December 1988,

Recalling Commission on Human Rights resolutions 1982/36 of 11 March 1982, 1983/46 of 9 March 1983, 1985/14 of 11 March 1985, 1987/45 of 10 March 1987, and 1989/58 of 8 March 1989,

Recalling in particular Commission on Human Rights resolution 1985/13 of 11 March 1985 emphasizing the necessity to ensure full enjoyment by youth of the rights stipulated in all relevant international instruments as indispensable for human dignity and the free development of the human personality, and requesting the Sub-Commission on Prevention of Discrimination and Protection of Minorities to pay due attention to the role of youth in the field of human rights,

Recalling its resolution 1985/12 of 29 August 1985 by which it requested Mr. Dumitru Mazilu, in order to facilitate the Sub-Commission's discussion of the topic, to prepare a report on human rights and youth analysing the efforts and measures for securing the implementation and enjoyment by youth of human rights, particularly the right to life, education and work,

Having in mind Commission on Human Rights resolution 1987/44 of 10 March 1987 in which the Commission took note with appreciation of Sub-Commission resolution 1985/12 in which the Sub-Commission requested one of its members to prepare a report on human rights and youth analysing the efforts and measures for securing the implementation and enjoyment of human rights by youth, particularly the right to life, education and work, and to submit it to the Sub-Commission at its thirty-ninth session,

Noting the report on human rights and youth presented by Mr. Dumitru Mazilu (E/CN.4/Sub.2/1989/41 and Add.1),

Further noting the difficult circumstances in which this report was prepared and the fact that the information collected by the Secretary-General relating to this subject appears not to have been delivered to Mr. Mazilu,

Noting with deep concern the information on the personal situation of Mr. Mazilu and his family,

Noting with great regret that the Special Rapporteur was unable to present in person his report to the forty-first session of the Sub-Commission,

Recalling its debate on this subject during its forty-first session,

Aware of the great importance of the subject of human rights and youth,

Reaffirming the need to observe the guidelines and practices of the Sub-Commission concerning the contents and the structure of theme reports, in particular the inappropriateness of discussing them in the absence of the Special Rapporteurs,

1. *Decides* to request Mr. Mazilu to update his report in the light of the discussion during the Sub-Commission's forty-first session, the information already collected for him by the Secretary-General and any other pertinent information;
2. *Further requests* the Special Rapporteur to present his updated report to the forty-second session of the Sub-Commission;
3. *Decides* to invite Mr. Mazilu now to present his updated report in person to the Sub-Commission at its forty-second session;

4. *Requests* the Secretary-General to continue to gather and furnish to Mr. Mazilu information relating to his study, and to provide Mr. Mazilu with all the assistance he might need in updating his report, including consultations with the Centre for Human Rights;

5. *Expresses its deep concern* at the reports of the personal situation of Mr. Mazilu and his family and requests the Secretary-General to follow closely the personal situation of Mr. Mazilu and his family in order that he informs the Special Rapporteur on the human rights of United Nations staff members, experts and their families accordingly, and requests this Special Rapporteur to report to the Sub-Commission on this matter at its forty-second session, and to present through the Secretary-General a note to the Commission on Human Rights, at its forty-sixth session, on the situation of Mr. Mazilu;

6. *Decides* to consider the updated report on human rights and youth at its forty-second session under its agenda item "Promotion, protection and restoration of human rights at national, regional and international levels".

40th meeting
1 September 1989

[Adopted by 12 votes to 4, with 2 abstentions. See Chap. XVI.]

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2. Press Releases Published by the United Nations Department of Public Information

176. Human rights Sub-Commission concludes debate on right to leave any country, 28 August 1989[1]	HR/CN/84
177. Human rights Sub-Commission receives reports on protection of minorities and United Nations staff members, 6 September 1989[1]	HR/CN/93
178. Human rights Sub-Commission ends session at Geneva, 7 September 1989[1]	HR/CN/94
179. Sub-Commission on Prevention of Discrimination and Protection of Minorities concludes its forty-first session at Geneva, 8 September 1989[1]	HR/CN/95

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[1] Document not reproduced. *[Note by the Registry.]*

EXPOSÉS ÉCRITS

WRITTEN STATEMENTS

WRITTEN STATEMENT SUBMITTED ON BEHALF OF THE SECRETARY-GENERAL OF THE UNITED NATIONS

INTRODUCTION

1. By resolution 1989/75, adopted on 24 May 1989 and entitled "Status of Special Rapporteurs" (doc. No. 99), the Economic and Social Council (hereinafter sometimes the "Council" or "ECOSOC") requested the International Court of Justice to give its advisory opinion

> "on the legal question of the applicability of Article VI, Section 22, of the Convention on the Privileges and Immunities of the United Nations in the case of Mr. Dumitru Mazilu as Special Rapporteur of the Sub-Commission [on Prevention of Discrimination and Protection of Minorities]".

2. The circumstances leading to this request for an advisory opinion pertain to a report on "Human Rights and Youth", assigned to Mr. Dumitru Mazilu by the Sub-Commission on Prevention of Discrimination and Protection of Minorities (hereinafter the "Sub-Commission") of the Commission on Human Rights (hereinafter the "Commission"). At issue is the legal status, under the abovementioned "General Convention", of Mr. Mazilu as a Special Rapporteur of the Sub-Commission whose membership in that body had expired before he had completed the report assigned to him. It should, however, be noted that while the Court has been asked about the applicability of Section 22 of the Convention in the case of Mr. Mazilu, it has not been asked about the consequences of that applicability, that is about what privileges and immunities Mr. Mazilu might enjoy as a result of his status and whether or not these had been violated.

3. The facts summarized in Section I below include both those constituting the background for the question as to which the advisory opinion was requested, as well as an account of the proceedings within the Sub-Commission, the Commission and the Council leading to that request, in so far as these facts appear germane to the question addressed to the Court. The facts set forth are supported by the cited documents contained in the Dossier, which is being transmitted to the Court in accordance with Article 65, paragraph 2, of its Statute.

4. Section II of this statement examines first the general authority of the Council to address its request to the Court, then the effect that the Romanian reservation to the General Convention might have on that authority in this specific case and finally whether there is any reason that the Court might exercise its discretion not to reply to the question that the Council — acting for the first time under Article 96 of the Charter — considered it important to ask.

5. The following Sections III-V discuss in turn various legal aspects of the Convention on the Privileges and Immunities of the United Nations of 13 February 1946 (the "General Convention") as a whole, then the definition and certain special considerations relevant to the category of "experts on missions" established by Article VI of that instrument and in particular by Section 22 thereof, and lastly whether that category includes the rapporteurs and special rapporteurs of the Sub-Commission. The final part of the statement, Section VI, then relates the conclusions from the above analyses, and especially that concerning those special rapporteurs, to the particular situation of Mr. Mazilu.

I. Summary of the Facts Giving Rise to the Request for an Advisory Opinion

A. Appointment of Mr. Mazilu as Special Rapporteur on "Human Rights and Youth"

6. On 13 March 1984 the Commission, upon nomination of Romania, elected Mr. Dumitru Mazilu, a Romanian citizen, to serve in his personal capacity as a member of the Sub-Commission for a three-year term, due to expire on 31 December 1986 (docs. Nos. 1, 1A).

7. Pursuant to the Commission's resolution 1985/13 calling upon the Sub-Commission to pay due attention to the role of youth in the field of human rights (doc. No. 3), the Sub-Commission at its thirty-eighth session on 29 August 1985 adopted resolution 1985/12 entrusting Mr. Mazilu with the preparation of a report on "human rights and youth" (doc. No. 6). This report was to be submitted under an agenda item entitled: "promotion, protection and restoration of human rights at national, regional and international levels", at the thirty-ninth session of the Sub-Commission scheduled for 1986. Sub-Commission resolution 1985/12 was endorsed by the Commission in its resolution 1987/44 of 10 March 1987, whereby it requested the Secretary-General to provide all necessary assistance to the Sub-Commission's rapporteur on human rights and youth for the completion of his task (doc. No. 15).

B. The Thirty-ninth Session of the Sub-Commission

8. For financial reasons the thirty-ninth session of the Sub-Commission was not convened in 1986 but was rescheduled for 1987. Consequently, the three-year mandate of its members — originally due to expire on 31 December 1986 — was extended by ECOSOC resolution 1987/102 for an additional year (doc. No. 14). The presentation of Mr. Mazilu's report was thus automatically deferred to 1987.

9. When the thirty-ninth session of the Sub-Commission opened in Geneva on 10 August 1987, Mr. Mazilu was not present, nor was his report submitted. At the 5th meeting of that session held on 12 August 1987, the representative of the Secretary-General said that by a letter transmitted to him that very morning, the Permanent Mission of Romania had informed the United Nations Office in Geneva that Mr. Mazilu had suffered a heart-attack and was still being held in a hospital (doc. No. 18, para. 27). Later there was received a telegram signed "D. Mazilu" and dated 18 August 1987, regretfully informing the Sub-Commission of his inability, due to heart illness, to attend the current session (doc. No. 19).

10. In the light of these communications, the Sub-Commission adopted decision 1987/112 on 4 September 1987, whereby it deferred consideration of item 14 of its agenda — under which the human rights and youth report was due to be discussed — to its fortieth session scheduled for 1988 (E/CN.4/1988/37 — E/CN.4/Sub.2/1987/42, p. 54). Notwithstanding the scheduled expiration on 31 December 1987 of Mr. Mazilu's term as a member of the Sub-Commission, the latter included a report on the "Prevention of discrimination and protection of children: human rights and youth", to be submitted by him (identified by name), in the provisional agenda of its fortieth session, as item 15 *(d)*. The Sub-Commission also referred to that report in Chapter II, entitled "Studies which do not imply new financial implications", of the "List of studies and reports under preparation by members of the Sub-Commission in accordance with the

existing legislative authority" (E/CN.4/1988/37 — E/CN.4/Sub.2/1987/42, pp. 120 and 135).

C. Communications between Mr. Mazilu and the Centre from the Thirty-ninth to the Fortieth Session of the Sub-Commission

11. After the thirty-ninth session of the Sub-Commission, the secretariat of the Centre for Human Rights made various attempts to contact Mr. Mazilu and to provide him with assistance in the preparation of his report, including arranging a trip to Geneva. Thus, in a letter dated 3 November 1987, the Under-Secretary-General for Human Rights assured Mr. Mazilu that all relevant information submitted by Governments, intergovernmental organizations and non-governmental organizations would be regularly sent to him, and that financial resources for his mission to Geneva had already been approved (doc. No. 20); indeed, such informations were sent to him on a regular basis (see, e.g., doc. No. 13 and Introduction to the Dossier, para. 9). In a subsequent telegram, dated 17 December 1987, the Under-Secretary-General requested a prompt reply to his 3 November letter, and in particular with respect to Mr. Mazilu's eventual proposals for assistance in the preparation of his report (doc. No. 21). Having received from Mr. Mazilu two letters postmarked 25 and 29 December 1987 (docs. Nos. 22, 23), whereby he indicated that he had not received the previous communications of the Centre, the Under-Secretary-General, in a telegram dated 19 January 1988 and addressed to the Acting Director of the United Nations Information Centre (UNIC) in Bucharest, requested the latter's assistance in facilitating Mr. Mazilu's work on his report by serving as a channel through which a ticket to Geneva would be provided to Mr. Mazilu; the Under-Secretary-General also asked that a formal invitation be communicated to Mr. Mazilu to come to the Centre for Human Rights in Geneva for consultations (doc. No. 24).

12. In an undated letter addressed to the Under-Secretary-General for Human Rights, and transmitted through the Acting Director of UNIC Bucharest (his letter of 20 January 1988), Mr. Mazilu indicated that despite his willingness to come to Geneva for consultations, the Romanian authorities refused him a travel permit (doc. No. 25). He likewise confirmed that he had been twice hospitalized and that he had been forced to retire, as of 1 December 1987, from his various governmental posts. In a series of letters dated 5 April, 19 April, 8 May and 17 May 1988 (docs. Nos. 31, 33, 34, 37, 38, 39), Mr. Mazilu further described his personal situation and the various pressures exerted upon him following his refusal to comply with a request addressed to him on 22 February 1988 by a special commission from the Foreign Office to voluntarily decline to submit his report to the Sub-Commission (doc. No. 31).

D. Expiration of Mr. Mazilu's Term as a Member of the Sub-Commission

13. On 31 December 1987 the terms of all members of the Sub-Commission, including Mr. Mazilu, expired (see para. 8 above). On 29 February 1988 the Commission, upon nomination of their respective Governments, elected new members of the Sub-Commission, among whom was Mr. Ion Diaconu, a Romanian citizen (doc. No. 29). In a letter dated 29 March 1988 and transmitted under cover of a Note Verbale dated 8 April 1988 from the Permanent Mission of Romania in Geneva[1] to the Chairman of the Sub-Commission (doc. No. 32),

[1] Unless otherwise indicated, all references to the Permanent Representative or Mission of Romania are to those in Geneva.

Mr. Diaconu offered to prepare a report on human rights and youth; this offer was repeated in a letter dated 27 June 1988 from the Permanent Mission of Romania to the Under-Secretary-General for Human Rights (doc. No. 42).

14. On 1 July 1988 the Under-Secretary-General for Human Rights informed the Permanent Representative of Romania that since Mr. Mazilu had been mandated by Sub-Commission decision 1985/12 to prepare the human rights and youth report, only the Sub-Commission or a higher policy-making body was competent to change that designation, failing which the Secretary-General was bound by the said resolution "to provide all necessary assistance to Mr. Dumitru Mazilu for the completion of this task" (doc. No. 44).

15. Nonetheless, in a telex received on 24 July 1988 (doc. No. 43), Mr. Diaconu notified the Sub-Commission that he was willing to prepare a report on human rights and youth and that he could send immediately a paper setting out the results of his research on this subject which he had already sent through the Permanent Mission of Romania for circulation to the members of the Sub-Commission.

E. Requests Addressed to the Romanian Government to Enable the Completion of the Human Rights and Youth Report by Mr. Mazilu

16. By letter dated 6 May 1988 (doc. No. 35) the Under-Secretary-General for Human Rights requested the assistance of the Permanent Mission of Romania in transmitting to Mr. Mazilu all relevant information previously submitted by Governments, specialized agencies and non-governmental organizations, and which was necessary for the completion of his report. By a letter of 15 June 1988 (doc. No. 41), the Under-Secretary-General informed the Permanent Representative of Romania that as an exceptional measure, a staff member of the Centre for Human Rights was authorized to travel to Bucharest for the purpose of working with Mr. Mazilu on his report — on the understanding that Mr. Mazilu would be enabled to present his report to the Sub-Commission in Geneva and to participate in the ensuing debate.

F. The Fortieth Session of the Sub-Commission

17. Even though all the rapporteurs and special rapporteurs of the Sub-Commission were invited to attend its fortieth session (8 August to 2 September 1988) and the sessions of its working groups, Mr. Mazilu again did not appear. During the debate on the organization of work of the session, various members expressed their views as to the situation of Mr. Mazilu. At the 9th meeting, held on 9 August 1988, the Chairman stressed the two-fold aim of the Sub-Commission, namely, the satisfactory completion of the human rights and youth report by Mr. Mazilu, and the presentation of the said report by the latter, in person. Mr. Diaconu argued that the Sub-Commission ought to be concerned with the report itself rather than with Mr. Mazilu, whose medical file — Mr. Diaconu asserted — had been communicated to the Sub-Commission in 1987; the attitude of the Sub-Commission amounted, in his view, to questioning the medical opinion upon which the Romanian Government relied; he argued that Mr. Mazilu was unable to complete his report for health reasons, and no other expert should be sent to Bucharest to complete the work for him. Other members of the Sub-Commission expressed their opinion, that at issue was not the competence of the Romanian doctors, but rather the decision of Mr. Mazilu himself as to his ability or will to complete the report. To allow Mr. Mazilu to express his decision freely it was necessary for him to travel to Geneva, failing

which a member of the Secretariat should be allowed to meet with him in Bucharest and learn from him directly of his decision (doc. No. 61, paras. 31-36). The observer for Romania at the meeting of the Sub-Commission, when invited to comment on what had been said, briefly stated that in his Government's view "any measure that might be regarded as a form of inspection or control would not be acceptable" (*ibid.*, para. 53). As a consequence of this discussion a special invitation was cabled to Mr. Mazilu on the same day (doc. No. 45).

18. At its 10th meeting, held on 15 August 1988, the Sub-Commission adopted decision 1988/102, whereby it requested the Secretary-General

> "to establish contact with the Government of Romania and to bring to the Government's attention the Sub-Commission's urgent need to establish personal contact with its Special Rapporteur Mr. Dumitru Mazilu and to convey the request that the Government assist in locating Mr. Mazilu and facilitate a visit to him by a member of the Sub-Commission and the Secretariat to help him in the completion of his study on human rights and youth if he so wished" (doc. No. 54).

19. At the 14th meeting, held on 17 August 1988, the Under-Secretary-General for Human Rights informed the Sub-Commission that in contacts held between the Secretary-General's office and the chargé d'affaires of the Romanian Permanent Mission in New York, the possibility of establishing direct contact with Mr. Mazilu had been raised. The Romanian attitude was that any intervention of the United Nations Secretariat and any form of investigation in Bucharest would be considered intervention in Romania's internal affairs. The case of Mr. Mazilu was an internal matter between a citizen and his own Government and for that reason no visits would be allowed to Mr. Mazilu (doc. No. 64).

G. The Legal Opinions of the Office of Legal Affairs

20. At the request of the Under-Secretary-General for Human Rights, the Office of Legal Affairs on 23 August 1988 gave a legal opinion on the applicability of the General Convention to the situation of Mr. Dumitru Mazilu (doc. No. 71). In summary, the legal opinion concluded that Mr. Mazilu, albeit an ex-member of the Sub-Commission, still had a valid assignment and should therefore be considered an "expert on mission" within the meaning of Article VI of the General Convention. Therefore, in the performance of his assignment, Mr. Mazilu was entitled by virtue of Section 22 of the Convention to those privileges and immunities necessary for the independent exercise of his functions (doc. No. 65).

21. At its 32nd meeting, on 30 August 1988, the Sub-Commission considered draft resolution E/CN.4/Sub.2/1988/L.25, whereby it was foreseen that an advisory opinion on the applicability of the General Convention to the Mazilu case might be sought from the International Court of Justice. Being aware, however, of a Romanian reservation to Section 30 of the General Convention, the Under-Secretary-General for Human Rights requested a second legal opinion from the Office of Legal Affairs on the question of whether the Romanian reservation could prevent a recourse to the Court for an advisory opinion and, in case of a negative answer, what would then be the legal implication of the reservation made by Romania (doc. No. 68, para. 46).

22. In his memorandum entitled: "Request for a legal opinion on the reservation made by Romania with respect to Section 30 of the Convention on the

Privileges and Immunities of the United Nations of 13 February 1946", the Legal Counsel of the United Nations answered that *(a)* the Romanian reservation to Section 30 of the General Convention did not prevent a competent United Nations organ from requesting an advisory opinion, under Article 96 of the Charter, concerning the applicability of Article VI, Section 22, of the General Convention on the situation of Mr. Mazilu but that *(b)* such an advisory opinion would not be binding upon the parties (doc. No. 72).

H. Sub-Commission Resolution 1988/37 on the Prevention of Discrimination and Protection of Children: Human Rights and Youth

23. The Sub-Commission on 1 September 1988 adopted by a roll-call vote of 16 to 4, with 3 abstentions resolution 1988/37 (doc. No. 55), containing a threefold request:

(a) It requested the Secretary-General to approach once again the Romanian Government and invoke the applicability of the General Convention in the case of Mr. Mazilu.

(b) Should Romania refuse to apply to Mr. Mazilu the relevant provisions of the General Convention, the Secretary-General was requested

> "to bring the difference between the United Nations and Romania immediately to the attention of the Commission on Human Rights at its forthcoming forty-fifth session in 1989".

(c) If no acceptable solution was found, the Commission would then be requested

> "to urge the Economic and Social Council to request . . . from the International Court of Justice an advisory opinion on the applicability of the relevant provisions of the Convention on the Privileges and Immunities of the United Nations to the present case . . .".

I. Exchange of Correspondence between the Secretary-General and the Permanent Representative of Romania

24. Pursuant to the foregoing resolution the Secretary-General on 26 October 1988 addressed a Note Verbale to the Permanent Representative of Romania to the United Nations in New York, in which he invoked the General Convention in respect of Mr. Mazilu and requested the Romanian Government to accord Mr. Mazilu the necessary facilities, including travel to Geneva, in order to enable him to complete his assigned task (doc. No. 73). As no reply had been received to that Note Verbale, the Under-Secretary-General for Human Rights on 19 December wrote a letter of reminder to the Permanent Representative of Romania in Geneva (doc. No. 74). Furthermore, during all this period, the Secretary-General had several conversations with the Permanent Representative of Romania in New York, in which he emphasized that Mr. Mazilu was to be considered as an expert on mission for the Organization, and requested the cooperation of the Romanian Government in facilitating the preparation of this report, including any necessary travel to Geneva.

25. On 6 January 1989 the Permanent Representative of Romania handed to the Legal Counsel of the United Nations an Aide-Mémoire (doc. No. 78) in which the Government's position concerning Mr. Mazilu was set forth as follows: Mr. Mazilu, being seriously ill, had retired from all his professional activities. The Romanian Government consequently presented the candidacy of

another expert to replace the ailing member, whose term of office had in any case expired on 31 December 1987. From then on all requests made, on behalf of the Sub-Commission, by the Under-Secretary-General for Human Rights and the Secretary-General, for the Government to enable Mr. Mazilu to complete his assigned task, were politically motivated and had nothing to do with the completion of the report on human rights and youth. This was all the more so in view of the refusal of the Sub-Commission to accept the draft report on that subject submitted to it by the newly elected Romanian member, for distribution as a document of the Sub-Commission. As to the General Convention, the Government rejected its applicability to Mr. Mazilu, whose mission was occasional, whose mandate had long before expired and who in any case would not have been entitled to any privileges and immunities while in his own country. In conclusion, the Romanian Government recalled that in view of its reservation to Section 30 of the General Convention regarding settlement of disputes, no recourse could be had to the International Court of Justice without the express consent of both parties.

J. The Secretary-General's Report to the Fifth Committee of the General Assembly at Its Forty-third Session

26. In his report to the Fifth (Administrative and Budgetary) Committee of the General Assembly, entitled : "Personal Questions : Respect for the Privileges and Immunities of Officials of the United Nations and the Specialized Agencies and Related Organizations", the Secretary-General also referred to the Mazilu case, although Mr. Mazilu was not an official of the Organization, and indicated that he

> "was not permitted by the Romanian authorities to travel to Geneva in order to present his report at the recent fortieth session of the Sub-Commission. Although no longer a member of the Sub-Commission, Mr. Mazilu had a valid assignment from the Sub-Commission and is, therefore, to be considered as having in that capacity the status of an expert on mission for the United Nations within the meaning of Article VI of the Convention on the Privileges and Immunities of the United Nations" (doc. No. 79).

27. At its 35th meeting on 18 November 1988, the Fifth Committee discussed the Mazilu case under agenda item 121 *(c)*, entitled : "Other Personal Questions". The representative of Denmark, speaking on behalf of the Nordic countries, expressed their concern as to the fate of Mr. Mazilu and appealed to the Romanian authorities to allow Mr. Mazilu to come to Geneva and complete his task. Mr. Mazilu's detention, it was argued, constituted a violation of applicable immunities and a hindrance to the Organization's work in the promotion of human rights. The Romanian representative at this meeting rejected any reference to Romanian nationals in the context of agenda item 121 *(c)*. He reminded the Committee that his Government's position with respect to that former member of the Sub-Commission had already been communicated to United Nations officials, and it had been demonstrated that the Convention on Privileges and Immunities was not applicable to the said former member (doc. No. 79A, paras. 45 and 62).

K. The Request for an Advisory Opinion

28. At the forty-fifth session of the Commission in 1989, the Secretary-General presented a Note "pursuant to paragraph 2 of resolution 1988/37 of the

Sub-Commission on Prevention of Discrimination and Protection of Minorities" (see para. 23 *(b)* above), to which were attached his Note Verbale to the Romanian Government of 26 October 1988, and the Romanian Aide-Mémoire of 6 January 1989 (doc. No. 81). The Commission, concluding that a difference has arisen between the United Nations and Romania as to the applicability of the General Convention, adopted by a roll-call vote of 26 to 5, with 12 abstentions its resolution 1989/37 (doc. No. 88) recommending that the Council request an advisory opinion from the International Court of Justice as to the applicability of the Convention to the Mazilu case.

29. As recommended in Commission resolution 1989/37, the Economic and Social Council on 24 May 1989 adopted by a recorded vote of 24 to 8, with 19 abstentions its resolution 1989/75 requesting an advisory opinion of the Court on the question of the applicability of Article VI, Section 22, of the General Convention in respect of Mr. Mazilu as Special Rapporteur of the Sub-Commission (see para. 1 above).

L. Further Communications from Mr. Mazilu

30. During the month of May 1989, Mr. Mazilu addressed to the Secretary-General, to the President of the General Assembly, to the Chairmen of the Commission and of the Sub-Commission, and to the Under-Secretary-General for Human Rights, a series of letters in which he expressed his continuing fears for his physical safety and the safety of his family, and urged the publication of his draft report on human rights and youth, which he had in the meantime submitted to the Centre in several instalments through various channels (docs. Nos. 93-96). The report is to be published in preliminary form as a document for the forty-first session of the Sub-Commission.

II. The Propriety of the Economic and Social Council Addressing Its Question to the International Court of Justice and of the Court Responding Thereto

31. Before entering on the substantive issues raised by the question addressed by the Economic and Social Council to the Court, it may be useful to consider first whether the Council was under the circumstances actually authorized to do so and, if so, whether the Court should exercise its discretion to respond to the question. These questions are adverted to since the Romanian Government has indicated, in its Aide-Mémoire transmitted to the United Nations Legal Counsel on 6 January 1989 (doc. No. 78), as well as in its statements to the Sub-Commission (docs. Nos. 68, para. 49, and 69, paras. 21-22) to the Commission (doc. No. 87, paras. 149-150) and to ECOSOC (docs. Nos. 89, para. 525, and 98), that it considered that because of the reservation it had entered to Section 30 of the General Convention "no advisory opinion can be requested on this case, or consequently, on the interpretation and application of the Convention on any other grounds".

A. The Authority of the Economic and Social Council

32. In the resolution by which the Council addressed its question to the Court it referred solely to two legal provisions as the bases for making its request: Article 96, paragraph 2, of the Charter of the United Nations and General Assembly resolution 89 (I) of 11 December 1946 (doc. No. 158).

33. The Charter provision empowers the General Assembly to authorize, *inter alia*, "[o]ther organs of the United Nations" to "request advisory opinions of the Court on legal questions arising within the scope of their activities". By means of the cited resolution the Assembly exercised this power in respect of the Economic and Social Council, authorizing it to "request advisory opinions . . . on legal questions arising within the scope of the activities of the Council" (doc. No. 158).

34. The question that the Economic and Social Council asked in the instant case is evidently a legal one, as it concerns "the applicability" of a specified section of the Convention on the Privileges and Immunities of the United Nations of 13 February 1946, which is a treaty in force, in respect of a Special Rapporteur of the Sub-Commission on Prevention of Discrimination and Protection of Minorities of the Commission on Human Rights. Whether it is necessary in responding to the Council's question to interpret the treaty or merely to decide as to its applicability under the indicated circumstances, it is clear that the question is entirely and solely a "legal" one within the meaning of the Charter and of the General Assembly's resolution. It should be noted that the Council itself specifically characterized its question as a "legal" one, and although that characterization is evidently neither binding on the Court nor capable of altering the essential nature of the question, it indicates the nature of the Council's interest in addressing its request to the Court.

35. The question by the Economic and Social Council is also one that arose within the scope of its activities. This is so because, as appears from the factual background summarized above, the applicability or not of Section 22 of the General Convention may determine whether a Government party to the Convention may interfere with a task assigned by the Sub-Commission to one of its special rapporteurs, i.e., the preparation of a report that the Sub-Commission had commissioned in response to an earlier resolution of the Commission on Human Rights (resolution 1985/13 of 11 March 1985 (doc. No. 3)). The Sub-Commission is a subsidiary organ of the Commission on Human Rights, established by the latter's resolution adopted in its first session held from 27 January to 10 February 1947 pursuant to Council resolution 9 II of 21 June 1946 (doc. No. 146); the Commission in turn is a subsidiary organ of the Council, established by the latter's resolution 5 I of 16 February 1946 (doc. No. 145), pursuant to Article 68 of the United Nations Charter. That Article emphasizes that the commissions that the Council is to set up under that authority are such as may be required for the performance of its (i.e., the Council's) functions.

36. The question formulated by the Economic and Social Council in its resolution 1989/75 is therefore a legal one that arose within the scope of the Council's activities, as required by paragraph 2 of Article 96 of the Charter and by General Assembly resolution 89 (I).

B. The Effect of the Romanian Reservation to the General Convention

37. The Romanian Government has, nevertheless, asserted that the reservation it entered to Section 30 of the General Convention prevents the request of an advisory opinion "on this case" and, even more generally, "on the interpretation and application of the Convention on any other grounds".

38. The two relevant texts read as follows:

(a) *Section 30 of the General Convention*:

> "All differences arising out of the interpretation or application of the present convention shall be referred to the International Court of Justice,

unless in any case it is agreed by the parties to have recourse to another mode of settlement. If a difference arises between the United Nations on the one hand and a Member on the other hand, a request shall be made for an advisory opinion on any legal question involved in accordance with Article 96 of the Charter and Article 65 of the Statute of the Court. The opinion given by the Court shall be accepted as decisive by the parties."

(b) *Romanian reservation in respect of the General Convention:*

"The Romanian People's Republic does not consider itself bound by the terms of Section 30 of the Convention which provide for the compulsory jurisdiction of the International Court in differences arising out of the interpretation or application of the Convention; with respect to the competence of the International Court in such differences, the Romanian People's Republic takes the view that, for the purpose of the submission of any dispute whatsoever to the Court for a ruling, the consent of all the parties to the dispute is required in every individual case. This reservation is equally applicable to the provisions contained in the said section which stipulate that the advisory opinion of the International Court is to be accepted as decisive." [Original French.]

39. First of all it should be noted that the only part of the reservation that relates to advisory opinions of the Court merely refers to the last sentence of Section 30 of the Convention, which provides that an advisory opinion given under the circumstances specified in the previous sentence is to be accepted as decisive by the parties. Thus, even the very terms of the reservation would not prevent a request for an advisory opinion or a reply to such a request, but merely may affect its decisive character.

40. In any event, the Economic and Social Council did not make its request pursuant to or in accordance with Section 30 of the General Convention, to which it nowhere refers in its resolution 1989/75, which otherwise specifically cites every text that the Council considered relevant to its request. The mere fact that the Council concluded that a difference had arisen between the United Nations and the Government of Romania in respect of the applicability of the General Convention does not mean that it intended to have that difference resolved in accordance with Section 30.

41. That the Economic and Social Council did not intend to have the difference that it perceived settled pursuant to Section 30 of the General Convention is not surprising, since it acted on a draft text presented to it by the Commission on Human Rights (see doc. No. 97). The latter was aware of the Romanian reservation to the Convention, since the text of the Romanian Aide-Mémoire of 6 January 1989 had been submitted to the Commission (doc. No. 81, Ann. II). Furthermore, the effect of the Romanian reservation on the powers of the Council to request an advisory opinion had been explicitly explored in the Sub-Commission, which received a legal opinion (see para. 22 above) explaining that in light of the Romanian reservation no advisory opinion to which a decisive effect would be attributed, could be requested under Section 30 of the General Convention, but that a request could always be made under the general powers of the Council under Article 96 of the Charter and the consequent General Assembly resolution (see doc. No. 72). The Council's subsequent action evidently followed that advice.

42. As the Council did not attempt to request an advisory opinion within the framework of Section 30 of the General Convention, but rather specifically relied solely on its authorization by the General Assembly in accordance with

the Charter, the Romanian reservation to that Section could not restrict that general authorization. Thus this situation differs clearly from that which motivated the Court to decline to respond to Question II of the Executive Board of the United Nations Educational Scientific and Cultural Organization, in *Judgments of the Administrative Tribunal of the ILO upon Complaints Made against Unesco, Advisory Opinion of 23 October 1956, I.C.J. Reports 1956,* p. 77, at p. 99.

43. Indeed to suggest, as does the Romanian Aide-Mémoire, that the Government's reservation to Section 30 of the General Convention can prevent the request for any advisory opinion relating to a position taken by the Government in respect to the Convention, would raise serious questions under Article 103 of the United Nations Charter, which assures the primacy of that instrument over all other international agreements. And if even the General Convention, which is such an agreement, could not itself limit the Charter-derived power of certain United Nations organs to request advisory opinions on legal questions, then a single Government's reservation to that Convention could certainly not have such an effect.

44. Finally, the Court may recall that in its advisory opinion of 28 May 1951 in respect of *Reservations to the Genocide Convention* it held that the Court's advisory jurisdiction cannot be excluded by the mere existence of a procedure for the settlement of disputes in an instrument in respect of which an advisory opinion has been requested, because the right to request advisory opinions derives directly from Article 96 of the Charter (*I.C.J. Reports 1951*, p. 15, at p. 20). This consideration must apply *a fortiori* in respect of an instrument whose disputes settlement procedure had been rendered ineffective in respect of a particular situation by a reservation.

C. The Discretion of the Court to Give an Advisory Opinion

45. This Court has repeatedly held that although its power to give advisory opinions is a discretionary one, its reply to a request for such an opinion from an authorized United Nations organ represents the Court's participation in the activities of the Organization and, in principle, should not be refused; indeed, the Court has held that only compelling reasons would justify such a refusal. (*Interpretation of Peace Treaties, Advisory Opinion, I.C.J. Reports 1950,* p. 65, at p. 71; *Reservations to the Convention on Genocide, Advisory Opinion, I.C.J. Reports 1951,* p. 15, at p. 19; *Judgments of the Administrative Tribunal of the ILO upon Complaints Made against Unesco, Advisory Opinion of 23 October 1956, I.C.J. Reports 1956,* p. 77, at p. 86; *Certain Expenses of the United Nations (Article 17, paragraph 2, of the Charter), Advisory Opinion of 20 July 1962, I.C.J. Reports 1962,* p. 151, at p. 155; *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970), Advisory Opinion, I.C.J. Reports 1971,* p. 16, at p. 41.)

46. Suffice it to say, this Court has never found, in considering any request for an advisory opinion, reasons sufficiently compelling to cause it to refuse to respond. With reference to the present request, there would appear to be no reasons, and certainly no compelling ones, for the Court to decline to play the role foreseen for it in the United Nations Charter and its own Statute.

47. The issue in respect to which the Economic and Social Council posed its question is a serious one, with far-reaching consequences. Although that question arose within the context of restrictions apparently imposed on the activities of a particular special rapporteur of a particular subsidiary organ, the Council

did not request the Court to address specifically these restrictions, but merely to determine whether a specified provision of the General Convention, a treaty of great importance to the United Nations and directly derived from the Charter (Art. 105, para. 3), is applicable to that special rapporteur — and thus by implication to other similar officials charged with carrying out tasks assigned to them by organs of the United Nations.

III. The Convention on the Privileges and Immunities of the United Nations (the "General Convention")

A. History of and Participation in the Convention

48. Paragraph 3 of Article 105 of the Charter of the United Nations provides that the General Assembly may propose conventions to the Members of the United Nations for the purpose of determining the details of the application of paragraphs 1 and 2 of that Article, relating to the privileges and immunities necessary to the Organization, as well as to representatives of its Members and to its officials. The Preparatory Commission of the United Nations consequently recommended that the General Assembly should at its first session propose such a convention, and the Commission included the draft of such an instrument in its Report to the Assembly (doc. No. 100). This draft was referred to the Sixth (Legal) Committee of the Assembly, which in turn referred it to a Sub-Committee on Privileges and Immunities. On the basis of the report of the Sub-Committee (doc. No. 101) and the consequent recommendation of the Sixth Committee (doc. No. 105), the Assembly on 13 February 1946 adopted its resolution 22 (I) by which it approved the text of the Convention on the Privileges and Immunities of the United Nations and proposed it for accession to each Member of the Organization (doc. No. 106).

49. Pursuant to Section 32 of the Convention, Member States of the United Nations may become parties to it by depositing an instrument of accession with the Secretary-General. Up to now, 124 States have done so (doc. No. 107). In addition, the Convention is routinely incorporated by reference into many types of agreements concluded between the Organization and States, including such as have not become parties to it, and thus even States that have not acceded to it may be bound for certain purposes by its provisions. The Convention has thus become the principal instrument through which the privileges and immunities of the Organization, and of persons associated with it, are defined and assured.

50. Although the General Convention contains no provision regarding the making of reservations, 22 of the States parties to it have acceded subject to one or more reservations (doc. No. 107). Even though some of these reservations were objected to by other parties to the Convention, the reserving States have always been considered as parties to the Convention. However, from time to time some draft reservations have been submitted for comment to the Secretary-General or to the Office of Legal Affairs, on which the advice has been that these would be incompatible with the Convention or even the Charter, or that they were on other grounds undesirable (docs. Nos. 110, 111).

B. The Legal Status of the Convention vis-à-vis the Organization

51. In its report recommending the adoption of the General Convention, the Sub-Committee on Privileges and Immunities of the Sixth Committee (see para. 48 above) stated (doc. No. 101, para. 5):

> "5. The General Convention on immunities and privileges of the United Nations is, in a sense, a Convention between the United Nations as an Organization, on the one part, and each of its Members individually on the other part. The adoption of a Convention by the General Assembly would therefore at one and the same time fix the text of the Convention and also imply the acceptance of that text by the United Nations as a body."

This conclusion is reflected in Section 35 of the Convention, which specifies that the "Convention shall continue in force as between the United Nations and every Member which has deposited an instrument of accession", thereby implying that the Organization itself is a party.

52. It was largely, though not entirely, on the basis of the latter consideration that the Legal Counsel of the United Nations concluded, in an opinion he delivered to the Sixth Committee on 6 December 1967, that although the Convention is a *sui generis* instrument, it was clear that the Organization was a party to it (doc. No. 112).

53. Nevertheless, even if the Organization should not be considered as a "party" *strictu sensu* to the General Convention, it is clearly a "third organization" that can derive obligations and rights under that instrument pursuant to the principles codified in Articles 35 and 36 of the 1986 Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations. The acceptance or assent of the Organization to such obligations and rights is evidently that given by the General Assembly in adopting the Convention and proposing it to Member States, an action taken pursuant to the explicit authorization of paragraph 3 of Article 105 of the Charter.

C. Interpretation of the Convention

54. As a treaty, the interpretation of the General Convention is subject to the rules codified in Section 3 of Part III of both the 1969 Vienna Convention on the Law of Treaties and of the 1986 Convention cited in the paragraph above. In particular, in interpreting the General Convention, account is to be taken, in addition to its context, of *inter alia* "any subsequent practice in the application of the treaty which establishes the agreement of the parties regarding its interpretation" (1969 and 1986 Vienna Conventions, corresponding Articles 31, paragraph 3 *(b)*). To the extent that the ordinary meaning of any terms of the Convention, as well as any indications derived from subsequent practice, still leave the meaning of the General Convention obscure, recourse may be had to its preparatory work and to the circumstances of its conclusion (*ibid.*, corresponding Articles 32).

IV. The Concept of "Experts on Missions" under the General Convention

A. The Text and the Formulation of the Convention

55. The title of Article VI of the General Convention reads: "Experts on Missions for the United Nations." Section 22 in that Article refers to: "Experts (other than officials coming within the scope of Article V) performing missions for the United Nations." Finally, Section 23 in the same Article refers merely to "experts". It should also be noted that Section 26 in Article VII refers to "experts and other persons . . . travelling on the business of the United Nations". None of these provisions give any further indication of the scope of

the terms "expert" or "mission", except that it is clear from Section 22 that officials of the United Nations (even if they are "experts") are not meant to be included in the former term.

56. In view of the consequent potential uncertainty about the meaning of the phrase "expert on mission", it may be instructive to look to the negotiating history to see if this might help provide clarity. Unfortunately, this is not so. The draft of the General Convention submitted by the Preparatory Commission to the General Assembly, while containing articles relating to the representatives of Member States and to officials of the Organization (the two categories of persons explicitly mentioned in paragraph 2 of Article 105 of the Charter), had none corresponding to the present Article VI; the only reference to "experts" was in paragraph 3 of Article 7 of the draft, which became Section 26 of the Convention (relating to the issue of travel certificates). The *Official Records* of the General Assembly only show that the text of present Article VI was added by the Sub-Committee on Privileges and Immunities, in its report to the Sixth Committee, and that that report contains no explanation of the addition. Nor was any reference to the new text made during the debates in the Sixth Committee, or in its report to the Plenary, or in the latter's consideration of the Convention before the adoption of General Assembly resolution 22 (I) (docs. Nos. 101-105).

57. In a study by Martin Hill, a former high official of the League of Nations and subsequently of the United Nations, the manuscript of which was made available to members of the Committee of the San Francisco Conference dealing with legal problems, the fact that the League Covenant had only referred to "representatives of Members of the League" and to "Officials of the League" had raised problems in regard to "other persons working for the League not as government representatives"; these problems concerned "members of the great majority of permanent and temporary commissions and committees and other agencies set up by the League", which were "composed of persons whose functions vary widely as to their nature, the places where they are performed, and their duration; above all, it is a group very difficult to delimit". One can only speculate that Article VI was added to fill this gap (doc. No. 113).

58. It might also be noted that the Convention on the Privileges and Immunities of the Specialized Agencies, which the General Assembly adopted a year later by resolution 179 (II) of 21 November 1947, and whose provisions are largely based on those of the General Convention, does not contain a provision corresponding to Article VI of that instrument (doc. No. 108). However, in the Annexes to the Specialized Agencies Convention that each of these agencies adopted in order to adapt the general provisions of that treaty to their particular needs (see Sec. 33 of the Specialized Agencies Convention) (doc. No. 108), 9 of them included provisions relating to "experts on missions" largely corresponding to those of Sections 22 and 23 of the General Convention. This suggests that even in those early days these agencies considered that they too would need to employ such experts to carry out their technical tasks — and thus that the phrase in question was meant to cover all kinds of ancillary personnel, political as well as technical, performing functions for these organizations rather than for their Governments.

B. Relevant Practice under the Convention

59. The consistent practice of the Organization from the time immediately following the adoption and entry into force of the General Convention has, indeed, been to classify and consider as "experts on missions" within the mean-

ing of Article VI of the Convention, various types of persons who are charged with performing a function or a task for the United Nations, as long as these persons were neither the representatives of a State nor staff members (i.e., officials) of the Organization. In respect of certain categories of persons that practice was reflected in agreements (e.g., technical assistance or conference agreements) entered into with Member States ; in respect of other categories, their status was not specified in any agreements but appears from practice as evidenced, *inter alia*, from explanatory correspondence with States, from internal legal opinions and from administrative issuances. It should also be noted that the practice of the specialized agencies, in implementing the provisions of their respective Annexes to the Convention on Privileges and Immunities of the Specialized Agencies (see para. 58 above) relating to experts on missions, has been similar to that of the United Nations.

60. The above-mentioned practice reflects the need of the United Nations and its specialized agencies, which in order to carry out their many and varied activities, rely heavily on the services of experts. A large number of experts from different countries, with various skills and qualifications, are constantly carrying out different missions. The tasks which have been assigned to them include writing reports, preparing studies, conducting investigations, finding and establishing facts, participating in peace-keeping forces, monitoring and observing situations, implementing technical assistance and a multitude of other activities. Many of these tasks can only be fulfilled by highly qualified and specialized experts who cannot always be found among the staffs of these organizations. In other cases, for administrative, financial and other reasons it is often desirable or necessary to appoint persons outside the category of United Nations officials. These include members of permanent or temporary commissions, committees or working groups serving as experts, and government officials on loan to the United Nations in their personal capacity, as well as individuals appointed by the Secretary-General as his representatives to perform specific tasks entrusted to him. The United Nations and the other agencies must, in order to carry out their functions, be able to count on respect for at least a minimum functional status of those persons to enable them to perform their tasks for the organizations, and that is precisely what Section 22 of the General Convention (and the corresponding provisions of the Annexes to the 1947 Convention — see para. 58 above) is designed to provide.

61. Annex I to this Statement sets out examples of categories of persons considered to be "experts on missions for the United Nations". From these examples — which necessarily refer for the most part only to categories in respect of whom a legal question was ever raised — it appears that the phrase "experts on missions" has from the beginning and in particular over the years come to embrace a wide category of persons who, whether as individuals or as members of a particular group (committee, commission, etc.), have been charged with performing some function or with carrying out some task or assignment for the Organization. Some of these individuals have been given that status by the Secretary-General, while others have been appointed or elected by other principal or subsidiary organs of the Organization. Finally it should be noted that while some of these persons have a contractual relationship with the Organization, such as consultants who receive a "special service agreement", others, such as most elected members of committees or commissions, have no such arrangements. Similarly, some experts receive compensation in the form of a fee or an honorarium, while others are not remunerated except by reimbursement of expenditures incurred by them in performing their assignments for the Organization (e.g., in travelling).

62. It is also important to note that there is no provision under the General Convention obliging the Organization to communicate the names of experts on mission to the Governments of Members — as there is in respect of officials (Sec. 17 of the General Convention). Indeed, no such notifications have been made in respect of experts — whose functions (and thus their special status) are, of course, often more ephemeral than those of staff members.

C. The Scope of the Privileges and Immunities Accorded to Experts on Missions

63. The privileges and immunities accorded to experts on missions by Section 22 of the General Convention are, unlike those specified in Section 11 in respect of representatives of Members, strictly functional. This appears first of all from the *chapeau* of Section 22, which refers to "such privileges and immunities as are necessary for the independent exercise of their functions during the period of their missions", and to the particular rights listed in the six subparagraphs. Furthermore, the privileges and immunities of experts on missions differ from those of officials covered by Section 18. Experts on missions enjoy no tax exemption on their official emoluments, no immunity from national service obligations, no immunity from immigration restrictions and registration requirements, and no rights of duty-free imports. The limited rights that they are granted are strictly designed to protect the interests of the Organization in the privacy of its papers and communications and in preventing any coercion or threat thereof in respect of the performance of the experts' missions (doc. No. 143).

D. The Status of Experts on Missions vis-à-vis Their Own Governments or in Their Own Countries

64. Neither Section 22 of the General Convention, nor any other provision in Article VI or otherwise in the instrument suggests that the rights of experts on missions are any different vis-à-vis their own Governments or in their own countries than they are vis-à-vis any other Government or in any other country. In this experts are treated like officials under Article V of the Convention — but unlike representatives of Members, who, pursuant to Section 15, enjoy no rights vis-à-vis the authorities of the State of which they are nationals or of which they are or were the representatives.

65. In this connection it should be noted that certain States parties to the General Convention have made particular limited reservations restricting certain immunities in respect of experts who are of the nationality of these States or in respect of all persons (thus presumably also including experts) having such nationality and residence (doc. No. 110). Other States that have inquired whether they could accede to the General Convention subject to broad reservations altogether excluding the privileges and immunities of officials and experts of their nationality, were advised that, depending on their scope, such reservations would be undesirable, or altogether incompatible with the Convention or even the Charter of the Organization (docs. Nos. 110, 111). Consequently any State, such as Romania, party to the Convention that has not made or attempted to make any reservation relating to the nationality or residence of experts on mission cannot later unilaterally impose any such restrictions.

66. It should also be noted that there exist no legal rules preventing the appointment or election of an expert to carry out a mission in his own country. Indeed, frequently special rapporteurs, rapporteurs and other persons assigned to prepare studies or reports perform part of their work in their own countries

(e.g., writing, research, and the analysis of materials, etc.). There are even instances where missions of an investigative nature were assigned to experts to be carried out in their own countries.[1] Though in these cases questions of privileges and immunities are rarely raised, all these persons fall within the category of experts on missions who are entitled to the privileges and immunities referred to in Section 22 of the General Convention.

67. It also appears from the foregoing analysis, that the assertion of these merely functional privileges and immunities in respect of persons (who are neither national representatives nor organization officials) charged with carrying out defined tasks for the United Nations, in no way constitutes any type of intervention by the Organization within the domestic jurisdiction of any State, in violation of Article 2, paragraph 7, of the Charter.

V. The Status of Rapporteurs of the Sub-Commission under the General Convention

A. The Status of Members of the Sub-Commission

68. The members of the Sub-Commission on Prevention of Discrimination and Protection of Minorities, though nominated by Governments, are elected by the Commission on Human Rights "as experts in their individual capacity". This is stated explicitly in Council resolution 1983/32 of 27 May 1983 (doc. No. 154), which has been reproduced in the Commission documents on the basis of which it conducts its elections to the Sub-Commission (e.g., doc. No. 1).

69. Even before the adoption of the above-cited Council resolution, the status of the Sub-Commission members was that indicated above. Though not specified in the original resolution establishing the Sub-Commission, this status has been recognized and reiterated since early days:

(a) During the third, fourth and fifth sessions of the Sub-Commission, objections were raised to the membership of one expert for alleged lack of representativeness. At its fourth session, the Sub-Commission, by a vote of 9 to 2, decided that it was not competent to discuss "a proposal for the expulsion" of one of its members on that ground (doc. No. 148). That decision was again confirmed at its fifth session (doc. No. 149). The Chairman of the meeting explained that the Sub-Commission had "based its decisions on the fact that its members were experts, not representatives of governments" *(ibid.)*.

(b) At its thirtieth session, in 1977, the Sub-Commission adopted a public statement reiterating that the members of the "Sub-Commission are elected in

[1] For example, in the practice of the Sub-Commission, in 1987 it requested that its Chairman, in response to an invitation from the Traditional Hopi Elders, delegate one or more members of the Sub-Commission to attend and observe United States Congressional hearings scheduled, both on site and in Washington, D.C., to consider further implementation of laws providing for the relocation of Hopi and Navajo families (Sub-Commission decision !987/110). In 1988 the Sub-Commission decided to invite Ms Erica-Irene Daes (Greek nationality, member of the Sub-Commission) and Mr. John Carey (USA nationality, alternate member of the Sub-Commission) to prepare a summary of the information which might be available to them regarding the relocation of Hopi and Navajo families, for the use of the Sub-Commission at its next (1989) session. Ms Daes attended the Congressional hearings and visited Arizona and Mr. Carey made a field trip to Arizona for the purpose of collecting information.

their personal capacity and are acting in this capacity with complete independence and impartiality" (docs. Nos. 151-152).

(c) The Office of Legal Affairs has confirmed that the status of the Sub-Commission on Prevention of Discrimination and Protection of Minorities is that of a subsidiary organ of the Commission on Human Rights whose members are experts nominated by Governments serving in their individual capacity (E/CN.4/Sub.2/1982/3, para. 18).

70. In any event, in respect of Mr. Mazilu, the Romanian Government has explicitly acknowledged that he was appointed by the Sub-Commission in his personal capacity to prepare a report on human rights and youth (doc. No. 78, para. 1).

71. The members of the Sub-Commission, who are thus neither governmental representatives nor members of the staff (i.e., officials) of the United Nations, and yet are charged with carrying out an important function of the Organization, thus clearly fall within the category of experts on missions discussed above (Sec. IV, B). Indeed, they are very similar to the members of the *Ad Hoc* Working Group of Experts on Human Rights (see item A.8 in Annex I)[1].

B. Rapporteurs and Special Rapporteurs of the Sub-Commission

72. The Sub-Commission has a long-established practice of appointing rapporteurs and special rapporteurs, usually from among its members, to assist it in performing its tasks. This practice was regularized by a set of guidelines that the Sub-Commission adopted at its twenty-seventh session, in 1974, which in relevant part provide as follows: (i) the appointment of special rapporteurs to study specific items is a desirable one and should be continued; (ii) there should be a time-limit for the preparation of studies and presentation of reports to "be extended as and when necessary"; (iii) the number of special rapporteurs to be appointed must take into account the needs of the Sub-Commission and the ability of the Secretariat to provide the necessary services. According to the guidelines, the Sub-Commission may also appoint one of its members "to make a study of an item and to make proposals for future work", the authors of which have been referred to as "rapporteurs" (doc. No. 150). It appears that in the practice of the Sub-Commission there is no essential distinction between "rapporteurs" and "special rapporteurs", though often persons designated to undertake studies or reports with financial implications and which therefore must be endorsed by the parent bodies (the Commission or the ECOSOC) are designated as "special rapporteurs" while those who prepare reports that have no financial implications are called "rapporteurs".

73. The rapporteurs and special rapporteurs are normally appointed from among the members of the Sub-Commission, though there have been some exceptions. In the past ten years, for example some 50 special rapporteurs or rapporteurs have been entrusted with studies or reports on various subjects. About 13 of them completed their assignments well after they ceased to be members of the Sub-Commission (see Ann. II.A hereto); another four rapporteurs or special rapporteurs have never been members of the Sub-Com-

[1] The fact that since 1983, by reason of ECOSOC resolution 1983/32 (doc. No. 154), members of the Sub-Commission are elected paired with an alternate, who also functions in an individual capacity, in no way changes the status of these members and alternates under the General Convention.

mission (Ann. II.B). The conferral or termination of the assignment or the status of rapporteur is not necessarily linked to a term of office as a member of the Sub-Commission.

74. When a member of the Sub-Commission is appointed as one of its rapporteurs, then that appointment gives an additional basis for his status as an expert on mission. And if that assignment should continue beyond the term of the membership — as occurs from time to time — then, although the original basis of his expert status has fallen away, that status continues, albeit on a more limited basis, until the special task is completed, or abandoned or reassigned to another person by a competent organ.

75. As a purely functional arrangement, i.e., one that applies only "during the period of their missions, including the time spent on journeys in connection with their missions" (see Sec. 22 of the General Convention), the rapporteurs can only receive any benefits from their status while carrying out or attempting to carry out their assignments.

VI. The Situation of Mr. Mazilu

A. Mr. Mazilu's Appointment as Special Rapporteur

76. The regularity of Mr. Mazilu's appointment as Special Rapporteur to prepare a report for the Sub-Commission on human rights and youth has never been challenged. In this connection it should be noted that, in spite of its formal title as the "Sub-Commission on the Prevention of Discrimination and Protection of Minorities", its actual functions have long been expanded by reason of specific decisions of the Commission and the Council, as well as through its own practice.

77. One of the basic terms of reference of the Sub-Commission is "to perform any other functions entrusted to it by the Economic and Social Council and the Commission on Human Rights"[1]. In respect of the report assigned to Mr. Mazilu, noted earlier, the Commission had in 1985 requested the Sub-Commission to pay attention to the role of youth in the field of human rights (doc. No. 3). On the basis of that request, the Sub-Commission charged Mr. Mazilu with preparing a report on human rights and youth (doc. No. 6), which assignment was then endorsed by the Commission by its resolution 1987/44 (doc. No. 15). It is clear therefore that the assignment of Mr. Mazilu is properly authorized and falls within the Sub-Commission's terms of reference.

78. It should be noted that even though initially Mr. Mazilu was not referred to as a special rapporteur in Sub-Commission resolution 1985/12, both the Commission and the Council, which are the parent organs of the Sub-Commission, later referred to him, on the basis of his functions (see para. 72 above) as a "Special Rapporteur" (docs. Nos. 88, 99).

B. The Continuation of Mr. Mazilu's Appointment as Special Rapporteur

79. According to its established practice, the Sub-Commission could extend Mr. Mazilu's assignment as Special Rapporteur past the term of his membership on the Sub-Commission, provided that he continued to be willing to carry it out. Indeed, in the absence of any clear indication on the part of either the Sub-

[1] Report of the Commission on its fifth session, *Official Records of the Economic and Social Council, Ninth Session, Supplement No. 10*, E/1371, Chap. IV, para. 13.

Commission or of Mr. Mazilu that the assignment should be considered terminated before its completion, there would be a presumption that it continued.

80. In fact, the Sub-Commission explicitly indicated and decided, at its thirty-ninth and fortieth sessions, that it wished Mr. Mazilu to continue and to complete his report on human rights and youth, even though he was by then no longer a member of the Sub-Commission. These decisions were subsequently endorsed by the Commission and by the Council (see paras. 10, 18 and 23 above).

81. Mr. Mazilu in turn, whenever he was in a position to communicate with the Sub-Commission, clearly indicated that he wished to continue to carry out his assignment, if possible by means of visits to Geneva but, if necessary, working in Romania (see paras. 12 and 30 above).

82. The mere fact that Mr. Mazilu delayed the start of his report, for medical or for other reasons, could not deprive him of his assignment or of his status as a Special Rapporteur of the Sub-Commission, unless that body itself decided that for reasons of his health or because of the delays it wished to make a change. It did not so decide.

83. The fact that Mr. Mazilu had resigned or been terminated from all his governmental posts makes no difference to his status as Special Rapporteur of the Sub-Commission. This is so because the assignment he received from the Sub-Commission in no way related to or was derived from any such posts. Indeed, he received his assignment as a member of the Sub-Commission, to which he had been elected "in his personal capacity".

84. Finally, the mere fact that when Mr. Mazilu's term expired, his Government nominated another citizen for membership on the Sub-Commission whom the Commission thereupon elected thereto (see para. 13 above), and the new member then indicated his willingness and intention to complete the report that had been assigned to Mr. Mazilu, could not deprive the latter of the assignment that he, personally, had received from the Sub-Commission. This is so because his Government, aside from having nominated him in 1983/4 as a member of the Sub-Commission, had thereafter no further responsibility for the tasks he assumed in that capacity or even otherwise. Nowhere is it provided that the Sub-Commission, or other United Nations organs, may only give assignments to persons with the approval of their Governments.

C. Mr. Mazilu's Status as an Expert on Mission

85. In the present case, Mr. Mazilu was entrusted by the Sub-Commission with preparing a report on human rights and youth. While Sub-Commission resolution 1985/12 did lay down some general guidelines for the preparation of the report, i.e., to analyse the efforts and measures for securing the implementation and enjoyment of human rights by youth, particularly the rights to life, education and work, the resolution did not specify where he should prepare the report. Although it appeared to be assumed that he would do so largely in Romania, administrative arrangements were also made to enable him, during his preparation, to come to Geneva for consultations and to present his report to the Sub-Commission upon its completion. It was also assumed that he would receive the customary assistance from the United Nations Secretariat in preparing his report, including, as a minimum, the dispatch and the receipt, to and from Romania, of materials relevant to the report and that he would be communicating with the United Nations Secretariat concerning the report. Consequently, Mr. Mazilu was in effect on mission in Romania in so far as his preparation of the report is concerned. He would also have been on mission

from Bucharest to Geneva had he been permitted to travel for consultations with the Human Rights Centre and to present his report in Geneva.

86. According to Article VI, Section 22, in the place where an expert is on mission, he should be accorded "such privileges and immunities as are necessary for the independent exercise of his functions during the period of his mission". The events of this case show that: (i) Mr. Mazilu was willing and eager to communicate with the Centre regarding his report, but he had for at least some time been prevented from doing so; (ii) he was willing and prepared to travel to Geneva for the purpose of consultations on his report, for which permission was, however, denied by the competent authorities; (iii) he was willing and prepared to come to Geneva to present his report, but he was not allowed to make the trip; (iv) the Centre for Human Rights, the UNIC office in Bucharest, and the UNDP office in Bucharest tried repeatedly to contact him, but for a considerable period his whereabouts were unknown; (v) the Centre and the Sub-Commission, as well as the Secretary-General himself requested co-operation from the Romanian Government to send someone to visit Mr. Mazilu with a view to assisting him in preparing his report, but such requests were rejected by the Romanian authorities.

87. The purpose of Section 22 of the General Convention is to ensure that "experts performing missions for the United Nations", i.e., persons who have a function or task to perform for the Organization, are enabled to do so without interference from (and indeed with certain indicated facilitation by) those Governments parties to the Convention which are in a position to do so. As indicated in paragraph 63 above, that also applies in respect of the Government of which the expert is a national. Even if it could be argued that the special status should normally only apply when the expert is journeying outside his own country (and there is no indication in the Convention that such a limitation was intended) the Government concerned cannot then be permitted to nullify the conventional status entirely by arbitrarily preventing precisely such a journey in connection with the expert's mission.

Conclusion

88. This statement has in the first instance endeavoured to establish that the Economic and Social Council was fully authorized to address its question to the Court, as that query is purely legal and arose within the scope of the Council's activities, concerning as it does the work of one of its subsidiary bodies. As the Council did not pose its question within the framework of Section 30 of the General Convention, the Romanian reservation to that provision, even if interpreted most broadly, cannot prevent the Council from exercising a power derived from the United Nations Charter. Finally it is indicated, and it also appears from this statement as a whole, that the Council's question is an important one, both because of the particular circumstances from which it arose and of the wider implications it has for the effective work of a significant group of persons performing unique and in part vital functions for the United Nations.

89. With reference to the substance of the Council's question, this statement has demonstrated that the category of "experts on missions", established and regulated by Section 22 in Article VI of the General Convention, an instrument directly derived from the Charter and essential to the smooth functioning of the Organization, is, according to well-established and consistent practice, applied to many different categories of persons who — not being either representatives of Governments or officials of the Organization — are assigned to assume functions or to perform specific tasks for the latter. These categories include both

the members and any rapporteurs or similar functionaries of bodies such as the Sub-Commission on Prevention of Discrimination and Protection of Minorities, who function in their individual capacity and to so function require the protection of the functional immunities derived from Section 22 of the General Convention, if necessary even vis-à-vis their own Governments and in their own countries.

90. Finally, it follows from the facts summarized and analysed in the statement, that Mr. Mazilu was a properly appointed special rapporteur of the Sub-Commission, both while he was a member of that body and even after his term of membership expired, because the Sub-Commission, with the specific support of the parent Commission on Human Rights, continued to expect him to prepare and to present in person a report that was assigned to him, and he continued to be willing to do so. It also appears from the circumstances that led the Council to pose its question, that for Mr. Mazilu to be able to carry out the task assigned to him in the way both he himself and the Sub-Commission expected, he required the protection of Section 22 of the General Convention — a protection to which he was entitled by the terms of that instrument as interpreted in accordance with the above-mentioned practice of the United Nations.

(Signed) Carl-August FLEISCHHAUER,
The Legal Counsel
of the United Nations.

28 July 1989.

Annex I

EXAMPLES OF CATEGORIES OF PERSONS CONSIDERED TO BE "EXPERTS ON MISSIONS FOR THE UNITED NATIONS" WITHIN THE MEANING OF ARTICLE VI, SECTION 22, OF THE GENERAL CONVENTION

Categories	*Sources*
A. Members of Commissions, Committees and similar organs	
1. International Law Commission	ILC study[1], paragraph 341; doc. No. 143; memo 29.6.73 from Legal Counsel to USG for Administration and Management.
2. Advisory Committee on Administrative and Budgetary Questions (except full-time Chairman)[2]	As above.
3. International Civil Service Commission (ICSC) (except full-time Chairman and Vice-Chairman)[3]	As above; letter 21.7.88 from ASG for General Services to the Executive Secretary, ICSC.
4. United Nations Administrative Tribunal	As above; letter 1.5.89 Legal Counsel to the President of the Administrative Tribunal; doc. No. 140.
5. International Narcotics Control Board (formerly the Permanent Central Narcotics Board)	As above; letter 7.3.73 Legal Counsel to Office of Financial Services.
6. Joint Inspection Unit[2]	Letter 8.10.73 from the Legal Counsel to a member of JIU; doc. No. 120.
7. Human Rights Committee	Letter 22.8.1983 from the Office of Legal Affairs to the Controller; doc. No. 131.
8. *Ad hoc* Working Group of Experts of the Commission on Human Rights	1974 *United Nations Juridical Yearbook ("UNJYB")*, Chapter VI.A, No. 14; doc. No. 121.

[1] The practice of the United Nations, the specialized agencies and the International Atomic Energy Agency concerning their status, privileges and immunities: Studies prepared by the Secretariat for the International Law Commission.

[2] The General Assembly decided in its resolution 3188 (XXVIII) of 18 December 1973 that the categories of officials to which the provisions of Articles V and VII of the General Convention apply, should include the Chairman of ACABQ and members of the JIU.

[3] The General Assembly decided in its resolution 3357 (XXIX) of 18 December 1974 that the Chairman and Vice-Chairman of ICSC should be regarded as officials of the United Nations.

9. Committee on the Elimination of Racial Discrimination	Memo 15.9.69 from Office of Legal Affairs to the Division of Human Rights, 1969 *UNJYB*; doc. No. 122.
10. Committee on the Elimination of All Forms of Discrimination Against Women	As above.
11. United Nations University Council	Letter dated 22.5.74 from the Office of Legal Affairs to the USG for Inter-Agency Affairs and Co-ordination.
B. United Nations peace-keeping missions	
1. Military observers of United Nations Truce Supervision Organization (UNTSO)	ILC study; doc. No. 143.
2. Military observers of United Nations Military Observer Group in India and Pakistan (UNMOGIP)	ILC study; doc. No. 143.
3. The Commander's Headquarters Staff of the United Nations Emergency Force (UNEF)	ILC study; doc. No. 143.
4. The Commander's Headquarters Staff of the United Nations Force in Cyprus	ILC study; doc. No. 143.
C. Government officials on loan	
1. US Government civil service on assignment to UNICEF	Letter 24.1.89 from Office of Legal Affairs to UNICEF; doc. No. 138.
2. French language co-ordinators paid directly by the French Government	Memo 1.8.85 from Office of Legal Affairs to the Office of Personnel Services; doc. No. 135.
3. Persons on loan from government servicing for the Office of the United Nations Relief Co-ordinator (UNDRO)	Memo 19.11.81 from Office of Legal Affairs to Office of General Services; doc. No. 128.
4. The Commander and members of the Technical Cadre Unit of the Swedish stand-by force for United Nations service to assist in reconstruction of areas in Peru	UN document E/4994, Annex III, 1971, *UNJYB*, Chapter VI.A, No. 3.
5. French military personnel participating in the multi-national demining missions in Afghanistan	Memo 1.3.89 from Office of Legal Affairs to United Nations Office at Geneva; doc. No. 139.
D. Short-term technical assistance experts on special service agreement (SSA) with the United Nations	Note Verbale 3.5.51 from the Secretary-General to Member States; UN Special Service Agreement; docs. Nos. 141, 141A and 142.

E. Special Representatives of the Secretary-General	
1. Mr. Olof Palme as Special Representative of the Secretary-General on mission to Iran/Iraq, 1982	Contract (Experts) between the UN and Mr. Palme, February 1982; doc. No. 129.
2. Special Representative of the Secretary-General to the United Nations International School	Letter 9.4.81 from Office of Legal Affairs to the Counsel for the General Counsel of (US) National Labor Relations Board; doc. No. 125.
F. Experts to investigate reports of alleged use of chemical weapons in Kampuchea	Memo 15.7.82 from Office of Legal Affairs to Centre for Disarmament; doc. No. 130.
G. Persons who entered into Special Service Agreement with the United Nations as consultants, independent contractors	UN Contract (Consultant); letter 8.3.79 from Office of Legal Affairs to Office of General Services; docs. Nos. 141, 142. Memo 20.6.75 from Office of Legal Affairs to the Controller, 1975 *UNJYB*, Chapter VI.A, No. 21.
H. Participants invited to attend the United Nations seminars or meetings	
1. Experts invited by the United Nations to attend the UN Meeting of Experts on Space Science and Technology in Nigeria, 1987	Agreement between UN and Nigeria dated 27.2.87; doc. No. 137.
2. Participants invited by the United Nations to attend the Interregional Training Programme in Government Budgetary Methods and Procedures in Cyprus, 1985	Letter 28.2.85 from UN Dept. of Technical Co-operation for Development to the Minister of Finance of Cyprus; doc. No. 133.
3. Participants invited by the United Nations to attend the Special Session of the Special Committee of 24 from 13 to 17 May 1985 in Tunisia	Letter 13.5.85 from the USG for Political Affairs, Trusteeship and Decolonization to the Foreign Ministry of Tunisia; doc. No. 134.

Annex II

A. List of Rapporteurs or Special Rapporteurs of the Sub-Commission on Prevention of Discrimination and Protection of Minorities Who Completed Their Assignments after the Expiration of Their Terms of Office as Members of the Sub-Commission

Legend: ER : Economic and Social Council resolutions.
CR: Commission on Human Rights resolutions.
SUR: Sub-Commission resolutions.

	Short title of study or report	*Name*	*Mandate and status*	*Date of completion and status*	*Legislative authority*
1.	Development of the right to self-determination E/CN.4/Sub.2/404	Mr. Aureliu Cristecu Special Rapporteur	1974 Member	1978 Not member	CR 4 (XXX) 1974 ER 1865 (LVI) 1974 SUR 3 (XXVII) 1974
2.	Implementation of UN resolutions on right of peoples to self-determination E/CN.4/Sub.2/405	Mr. Hector Gros Espiell Special Rapporteur	1974 Member	1978 Not member	CR 5 (XXX) 1974 ER 1866 (LVI) 1974 SUR 4 (XXVII) 1974
3.	Protection of human rights to non-citizens E/CN.4/Sub.2/392/ Rev. 1	Baroness Elles Special Rapporteur	1974 Member	1978 Not member	SUR 10 (XXVII) 1974
4.	Foreign economic aid impact on respect for human rights E/CN.4/Sub.2/412	Mr. Antonio Cassese Rapporteur	1977 Member	1978, 1980 Not member	SUR 11 (XXX) 1977
5.	Prevention and punishment of crime of genocide E/CN.4/Sub.2/416	Mr. Nicodème Ruhashyankiko Special Rapporteur	1971 Member	1978 Not member	ER 1420 (XLVI) 1969 SUR 7 (XXIV) 1971
6.	Right of everyone to leave and return to his own and other countries E/CN.4/Sub.2/1988/ 35 and Add.1 and Corr.	Mr. C. L. C. Mubanga-Chipoyya Special Rapporteur	1982 Member	1988 Not member	SUR 1982/23 1982
7.	Implications for human rights in state of siege or emergency E/CN.4/Sub.2/1982/ 15	Mrs. Nicole Questiaux Special Rapporteur	1977 Member	1982 Not member	SUR 10 (XXX) 1977 5D (XXXI) 1978

	Short title of study or report	*Name*	*Mandate and status*	*Date of completion and status*	*Legislative authority*
8.	Discrimination against indigenous populations E/CN.4/Sub.2/476 and Adds. E/CN.4/Sub.2/1982/2 and Adds. E/CN.4/Sub.2/1983/21 and Adds.	Mr. José Martinez-Cobo Special Rapporteur	1971 Member	1983 Not member	ER 1589 (L) 1971
9.	Traditional practices affecting the health of women and children E/CN.4/1986/42	Mrs. Halima Embarek Warzazi Special Rapporteur	1982 Member	1986 Not member	SUR 1982/15, 1982 CR 1984/48, 1984 ER 1984/34, 1984
10.	Problems of intolerance and discrimination on grounds of religion or belief E/CN.4/Sub.2/1987/26	Mrs. Elizabeth Odio Benito Special Rapporteur	1983 Member	1987 Not member	CR 1983/40, 1983 SUR 1983/31, 1983
11.	Administration of justice and the human rights of detainees E/CN.4/Sub.2/1987/20	Mr. Marc Bossuyt Special Rapporteur	1984 Member	1987 Not member	SUR 1984/7, 1984 CR 1985/46, 1985 ER 1985/41, 1985
12.	Slavery and slavery-like practices (Report on Mauritania) E/CN.4/Sub.2/1984/23	Mr. Marc Bossuyt Special Rapporteur	1984 Member	1987 Not member	ER 1982/129, 1982 CR 1982/20, 1982 SUR 1984/28, 1984
13.	Exploitation of child labour E/CN.4/Sub.2/479	Mr. A. Bouhdiba Special Rapporteur	1979 Member	1981 Not member	ER 1980/125, 1980 CR 17 (XXXVI), 1980 SUR 7 (XXXII), 1979

B. List of Persons Appointed by the Sub-Commission as Rapporteurs or Special Rapporteurs Who Were Not Members of the Sub-Commission

Short title of study or report	*Name*	*Mandate and status*	*Date of completion and status*	*Legislative authority*
1. Independence and impartiality of judiciary and jurors, assessors and the independence of lawyers E/CN.4/Sub.2/1985/18, Add.1-6	Mr. L. M. Singhvi Special Rapporteur	1979 Not member	1985 Not member	SUR 5 (XXXII) 1979
2. Achievements and obstacles: first decade for action to combat racism and racial discrimination E/CN.4/Sub.2/1985/7 E/CN.4/Sub.2/1987/6 E/CN.4/Sub.2/1988/5	Mr. Asbjørn Eide Special Rapporteur	1984 Not member	1984 Not member	ER 1984/24, 1984
3. Draft declaration on independence and impartiality of judiciary, jurors and assessors and the independence of lawyers E/CN.4/Sub.2/1988/20	Mr. L. M. Singhvi Special Rapporteur	1987 Not member	1988 Not member	SUR 1987/23, 1987

MÉMORANDUM DU GOUVERNEMENT DE LA RÉPUBLIQUE SOCIALISTE DE ROUMANIE

Mémorandum relatif à la requête pour avis consultatif transmise à la Cour internationale de Justice en vertu de la résolution 1989/75 du Conseil économique et social du 24 mai 1989

Par sa résolution 1989/75 adoptée le 24 mai 1989 le Conseil économique et social de l'Organisation des Nations Unies a demandé, à titre prioritaire, à la Cour internationale de Justice,

> « un avis consultatif sur la question juridique de l'applicabilité de la section 22 de l'article VI de la convention sur les privilèges et immunités des Nations Unies au cas de M. Dumitru Mazilu en sa qualité de rapporteur spécial de la Sous-Commission de la lutte contre les mesures discriminatoires et de la protection des minorités ».

Dans cette résolution, on affirme

> « qu'une divergence de vues s'est élevée entre l'Organisation des Nations Unies et le Gouvernement roumain quant à l'applicabilité de la convention sur les privilèges et immunités des Nations Unies au cas de M. Dumitru Mazilu, en sa qualité de rapporteur spécial de la Sous-Commission... »

Vu cette demande d'avis consultatif, la partie roumaine désire faire savoir à la Cour ce qui suit :

1. La Roumanie est partie à la convention sur les privilèges et immunités des Nations Unies, approuvée par l'Assemblée générale des Nations Unies le 13 février 1946. La Roumanie a adhéré à cette convention par le décret nº 201 du 21 avril 1956 et la convention est entrée en vigueur à son égard à la date du dépôt de son instrument d'adhésion, à savoir le 5 juillet 1956.

A l'occasion de son adhésion à la convention, la Roumanie a formulé la réserve suivante à la section 30 de la convention, relative au règlement des différends :

> « La République populaire roumaine ne se considère pas liée par les stipulations de la section 30 de la convention, en vertu desquelles la juridiction de la Cour internationale de Justice est obligatoire en cas de contestation portant sur l'interprétation ou l'application de la convention ; en ce qui concerne la compétence de la Cour internationale de Justice dans les différends surgis dans de tels cas, la position de la République populaire roumaine est que, pour la soumission de quelque différend que ce soit à la réglementation de la Cour, il est nécessaire, chaque fois, d'avoir le consentement de toutes les parties au différend. Cette réserve s'applique également aux stipulations comprises dans la même section, selon lesquelles l'avis consultatif de la Cour internationale doit être accepté comme décisif. »

Cette réserve de la Roumanie a été dûment enregistrée aux Nations Unies et distribuée par le Secrétaire général, en tant que dépositaire de la convention, par la lettre circulaire CN.67.1956.Treaties du 13 juillet 1956 (dont une copie est jointe).

L'effet juridique de la réserve formulée par la Roumanie, tel qu'il est prévu dans la convention de Vienne sur le droit des traités du 23 mai 1969 (art. 21), en est que cette réserve modifie, dans les relations entre l'Etat auteur et les autres Etats parties à la convention, donc à l'egard de l'Organisation des Nations Unies également, les dispositions de la convention sur lesquelles porte la réserve, dans la mesure prévue par cette réserve.

La réserve formulée par la Roumanie contient, essentiellement, deux éléments:

a) la Roumanie ne se considère pas liée par les dispositions de la section 30, selon lesquelles la juridiction de la Cour est obligatoire en cas de contestation portant sur l'interprétation ou l'application de la convention;

b) en ce qui concerne la compétence de la Cour, la position de la Roumanie est que, pour la soumission à la Cour de quelque différend que ce soit, il est nécessaire d'avoir, chaque fois, le consentement de toutes les parties au différend.

Cette réserve, avec ses deux éléments, s'applique également à l'égard des dispositions de la même section relatives au déclenchement de la procédure d'avis consultatif de la Cour, en cas de litige entre l'Organisation des Nations Unies et un Etat membre, avis qui, selon la section 30 de la convention, devrait être accepté par les parties comme décisif.

Il en découle:

a) que la Roumanie n'est pas liée par les dispositions de la section 30, relatives à la juridiction obligatoire de la Cour en cas de différends éventuels surgis entre l'Organisation des Nations Unies et la Roumanie portant sur l'interprétation ou l'application de la convention de 1946;

b) qu'en ce qui concerne la compétence d'examiner tout différend surgi entre l'Organisation des Nations Unies et la Roumanie, y compris dans le cadre de la procédure consultative, la Cour ne saurait se déclarer compétente que s'il existe le consentement de toutes les parties au différend, la Roumanie comprise.

2. La Roumanie a déclaré expressément qu'elle n'était pas d'accord à ce que l'on demande quelque avis que ce soit à la Cour concernant le cas présent (voir le mémorandum adressé le 6 janvier 1989 au conseiller juridique de l'Organisation des Nations Unies par le représentant permanent de la Roumanie à l'Organisation des Nations Unies, document E/CN.4/1989/69 du 13 février 1989, annexe II, par. 3).

En conséquence, les conditions nécessaires ne sont pas réunies pour que la Cour internationale de Justice se déclare compétente d'emettre un avis consultatif relatif à l'interprétation et à l'application de la convention sur les privilèges et immunités des Nations Unies, dans les rapports entre la Roumanie et l'Organisation des Nations Unies.

Le fait que la résolution 1989/75 du 24 mai 1989 du Conseil économique et social ne se réfère pas à la section 30 de la convention, en tant que fondement pour sa demande d'avis consultatif, mais à la résolution 89 (I) du 11 décembre 1946 de l'Assemblée générale, n'est nullement à même de changer la situation, étant donné que la demande d'avis consultatif a pour objet «la question juridique de l'applicabilité de la section 22 de l'article VI de la convention» à un cas concret considéré comme un différend entre un Etat partie à la convention et l'Organisation des Nations Unies. C'est pourquoi, la demande d'un pareil avis consultatif, sur l'application d'une disposition de substance de la convention, ne saurait faire abstraction des dispositions de la même convention relatives au

règlement des différends, y compris en ce qui concerne la demande d'avis consultatifs à la Cour sur de tels différends portant sur l'application de la convention, donc la section 30 de ladite convention. S'il en était ainsi, *a fortiori* on ne saurait faire abstraction de la réserve de la Roumanie à la section 30, et cela parce que la Roumanie a adhéré à ladite convention dans sa totalité, et la réserve formulée représente une partie intégrante de l'expression du consentement de la Roumanie d'adhérer à la convention; cette réserve a un poids essentiel pour déterminer l'étendue des obligations qu'elle a assumées envers les autres parties à la convention, de même qu'envers l'Organisation des Nations Unies.

Si l'on acceptait qu'un Etat partie à la convention, ou l'Organisation des Nations Unies, puisse demander que des différends concernant l'application ou l'interprétation de la convention soient portés devant la Cour sur un autre fondement que les dispositions de la section 30 de la convention, ce serait rompre l'unité de la convention, à savoir les dispositions de substance de celles relatives à la solution des différends, ce qui serait à même de modifier le contenu et l'étendue des obligations assumées par les Etats lorsqu'ils ont donné leur consentement d'être liés par la convention.

3. Sans préjudice de sa position, telle qu'elle a été exposée aux points 1 et 2 ci-dessus, notamment que la Cour internationale de Justice n'a pas la compétence à donner un avis consultatif sur cette question, la Roumanie considère que le problème de l'application de la convention de 1946 ne se pose même pas en l'espèce.

En premier lieu, la convention n'assimile pas les rapporteurs, dont les activités sont occasionnelles, aux experts qui accomplissent des missions pour l'Organisation des Nations Unies.

L'expression même «experts» y est employée pour les distinguer des «fonctionnaires» des Nations Unies, lesquels déploient une activité à caractère permanent, alors que celle d'experts n'est qu'occasionnelle.

Même si on reconnaît partiellement aux rapporteurs le statut des experts des Nations Unies, les dispositions de la section 22 de l'article VI de la convention (experts en mission pour l'Organisation des Nations Unies) font ressortir clairement que ceux-ci ne jouissent que de privilèges et immunités fonctionnels, notamment ceux liés à l'activité qu'ils remplissent pour l'Organisation des Nations Unies, pendant la durée de leur mission et seulement dans les pays où la mission est remplie, y compris le temps du voyage lié à cette mission. A cet égard, la section 22 de la convention prevoit que

> «les experts ... lorsqu'ils accomplissent des missions pour l'Organisation des Nations Unies, jouissent, pendant la durée de cette mission, y compris le temps du voyage, des privilèges et immunités nécessaires pour exercer leurs fonctions en toute indépendance».

Ces dispositions font ressortir clairement qu'un expert ne jouit pas de privilèges et immunités n'importe quand, mais uniquement dans le pays où il est envoyé en mission, et seulement pendant la durée de celle-ci, de même que dans les pays de transit, lors des voyages requis par la mission. De même, les privilèges et les immunités ne peuvent courir que du moment du départ de l'expert en voyage pour accomplir la mission. Pour autant que le voyage de l'expert aux fins d'accomplir la mission pour l'Organisation des Nations Unies n'ait pas commencé, et cela pour des raisons qui n'ont aucun lien avec son activité d'expert, il n'y a nul fondement juridique pour prétendre des privilèges et immunités conformément à la convention, sans égard au fait qu'il se trouve dans son pays de résidence ou dans un autre pays, dans une qualité autre que celle d'expert.

Dans le pays dont il possède la citoyenneté, dans le pays où il a sa résidence permanente, ou dans d'autres pays où il pourrait se trouver en dehors de la mission respective, l'expert ne jouit de privilèges et immunités qu'en ce qui concerne le contenu de l'activité déployée au cours de sa mission (y compris ses paroles et écrits).

La Roumanie ne nie pas l'applicabilité des dispositions de la convention de 1946, dans le sens décrit ci-dessus. Elle n'a pas connaissance du fait que les organes compétents de l'Organisation des Nations Unies auraient donné une autre interprétation aux dispositions de cet article de la convention.

Par conséquent, puisque tel est le sens clair des dispositions de la convention, il n'y a aucun fondement juridique pour soutenir qu'un litige aurait surgi entre l'Organisation des Nations Unies et la Roumanie, portant sur l'application et l'interprétation de la convention.

4. En ce qui concerne la situation de l'ancien membre roumain dans la Sous-Commission de la lutte contre les mesures discriminatoires et de la protection des minorités :

M. Dumitru Mazilu a reçu le mandat d'élaborer le rapport sur « la jeunesse et les droits de l'homme » en 1985 par la résolution 1985/12 du 29 août 1985 de la Sous-Commission. Pendant le mois de mai 1987 il est tombé gravement malade, raison qui a conduit, sur sa demande, à sa mise à la retraite pour incapacité de travail, à partir du 1er décembre 1987. En 1988, une commission médicale a, conformément aux lois roumaines en vigueur, réexaminé l'état de santé de M. Dumitru Mazilu et a décidé de prolonger pour une nouvelle année sa mise à la retraite pour incapacité de travail.

La partie roumaine a soumis au Secrétariat des Nations Unies le dossier médical complet de M. Dumitru Mazilu.

Depuis 1985 jusqu'à la date de sa mise à la retraite, M. Dumitru Mazilu n'a rien entrepris pour remplir son mandat. Au moment de sa retraite il n'avait même pas commencé à rédiger le rapport en question.

Vu l'état de sa santé, tel que constaté et certifié par les médecins, et sa propre demande d'être mis à la retraite pour incapacité de travail, il était d'autant peu probable que M. Dumitru Mazilu ait pu remplir son mandat de rapporteur spécial. En fait, la tâche d'un rapporteur ne se limite uniquement à une simple rédaction d'un texte, mais bien au contraire (cela suppose toute une série d'activités, telles que : une documentation approfondie et objective, déplacements, contacts, etc.). Selon le dernier examen des médecins, M. Dumitru Mazilu n'était pas en mesure d'assumer et d'effectuer une telle activité. Ni par la suite n'ont apparu des éléments à même de prouver que l'état de sa santé aurait connu une amélioration.

En conséquence, en raison de l'état de sa santé, qui ne permet pas à M. Dumitru Mazilu d'accomplir la mission respective, les éléments de fait, à même de poser le problème de l'application de la convention, ne sont pas réunis.

A cet égard, il semble qu'il existe une différence entre la position de la Roumanie et celle du Secrétariat des Nations Unies. Il s'agit là d'une différence d'opinion portant sur des éléments de fait concernant l'état de santé d'une personne et sa capacité de déployer une certaine activité, à savoir la mesure dans laquelle l'état d'incapacité de travail de M. Dumitru Mazilu le rend inapte pour élaborer le rapport en question. La partie roumaine considère que cette question a déjà été tranchée par l'avis de la commission médicale, rendu en 1987 et reconfirmé en 1988. En effet, ladite commission a décidé de mettre M. Mazilu à la retraite pour incapacité de travail. La loi roumaine n'autorise ni l'employeur, ni nul autre organe de l'Etat à ignorer ou outrepasser l'avis des médecins.

5. En conclusion:

— comme effet des réserves formulées par la Roumanie à la section 30 de la convention sur les privilèges et immunités des Nations Unies, la Cour internationale de Justice ne peut pas se déclarer compétente pour donner un avis consultatif sur l'application de la convention par la Roumanie ou à l'égard de la Roumanie, dans le cas en discussion, vu que la Roumanie n'avait pas donné son consentement pour la demande d'un pareil avis;

— faire abstraction de la section 30 de la convention et solliciter un avis consultatif sur un autre fondement, ce serait rompre l'unité de la Convention et du consentement donné par l'Etat concerné, lorsqu'il a décidé d'adhérer à cet instrument;

— il n'y a aucun fondement juridique pour soutenir qu'un différend aurait surgi entre l'Organisation des Nations Unies et la Roumanie — en ce qui concerne l'application ou l'interprétation de la convention, ou bien l'applicabilité de celle-ci;

— dans le cas en discussion, les éléments de fait à même de poser le problème de l'application de la convention ne sont pas réunis;

— les différences d'opinions et d'appréciation entre la Roumanie et le Secrétariat des Nations Unies portent sur la situation de fait, à savoir l'état de santé de M. Dumitru Mazilu, lequel l'a empêché et l'empêche encore à remplir la tâche qu'il a assumée lorsqu'il a été membre de la Sous-Commission; ces différences de vues ne portent donc guère sur les aspects juridiques concernant l'interprétation, l'application ou l'applicabilité de la convention.

Annexe

CN.67.1956.TREATIES Le 13 juillet 1956.

CONVENTION SUR LES PRIVILÈGES ET IMMUNITÉS DES NATIONS UNIES APPROUVÉE PAR L'ASSEMBLÉE GÉNÉRALE LE 13 FÉVRIER 1946

Adhésion par la République populaire roumaine

Je suis chargé par le Secrétaire général de porter à votre connaissance que, le 5 juillet 1956, l'instrument d'adhésion du Gouvernement de la République populaire roumaine à la convention sur les privilèges et immunités des Nations Unies a été déposé auprès du Secrétaire général, conformément aux dispositions de la section 32 de la convention, aux termes de laquelle la convention entre en vigueur à l'égard de chaque membre à la date du dépôt par ce membre de son instrument d'adhésion.

L'instrument d'adhésion contient la réserve ci-après:

> « La République populaire roumaine ne se considère pas liée par les stipulations de la section 30 de la convention, en vertu desquelles la juridiction de la Cour internationale de Justice est obligatoire en cas de contestation portant sur l'interprétation ou l'application de la convention; en ce qui concerne la compétence de la Cour internationale de Justice dans les différends surgis dans de tels cas, la position de la République populaire roumaine est que, pour la soumission de quelque différend que ce soit à la réglementation de la Cour, il est nécessaire, chaque fois, d'avoir le consentement de toutes les parties au différend. Cette réserve s'applique également aux stipulations comprises dans la même section, selon lesquelles l'avis consultatif de la Cour internationale doit être accepté comme décisif. »

Veuillez agréer, les assurances de ma très haute considération.

Le conseiller juridique p.i.,

YUEN-LI LIANG.

LETTRE DU JURISCONSULTE ET DIRECTEUR GÉNÉRAL DES AFFAIRES JURIDIQUES DU MINISTÈRE FÉDÉRAL DES AFFAIRES ÉTRANGÈRES DE LA RÉPUBLIQUE FÉDÉRALE D'ALLEMAGNE AU GREFFIER

Bonn, le 13 juillet 1989.

Monsieur le Greffier,

J'ai bien reçu votre lettre en date du 14 juin 1989 adressée au ministre fédéral des affaires étrangères et par laquelle vous faites connaître au Gouvernement de la République fédérale d'Allemagne qu'il a la possibilité de transmettre à la Cour un exposé au sujet du cas objet de la résolution 1989/75 du Conseil économique et social des Nations Unies demandant à la Cour un avis consultatif sur la question juridique de l'applicabilité de la section 22 de l'article VI de la convention du 13 février 1946 sur les privilèges et immunités des Nations Unies au cas de M. Dumitru Mazilu en sa qualité de rapporteur spécial de la Sous-Commission de la lutte contre les mesures discriminatoires et de la protection des minorités.

De l'avis du Gouvernement de la République fédérale d'Allemagne, M. Mazilu a continué d'être chargé, au-delà de la durée de ses fonctions en qualité de membre de la Sous-Commission, de l'élaboration en sa qualité d'expert d'un rapport sur le thème des «droits de l'homme et la jeunesse» pour la Sous-Commission.

Il jouit par conséquent des privilèges et immunités prévus à la section 22 de l'article VI de la convention du 13 février 1946 sur les privilèges et immunités des Nations Unies.

Veuillez agréer, Monsieur le Greffier, l'expression de ma parfaite considération.

(Signé) Dr. OESTERHELT.

WRITTEN STATEMENT OF THE GOVERNMENT OF THE UNITED STATES OF AMERICA

Introduction

By resolution 1989/75 of 24 May 1989, the United Nations Economic and Social Council ("ECOSOC") has requested on a priority basis, pursuant to Article 96 of the Charter of the United Nations and in accordance with General Assembly resolution 89 (I) of 11 December 1946, an advisory opinion from the International Court of Justice ("Court") on the legal question of the applicability of Article VI, Section 22, of the Convention on the Privileges and Immunities of the United Nations ("the General Convention") in the case of Mr. Dumitru Mazilu as Special Rapporteur of the Sub-Commission on the Prevention of Discrimination and the Protection of Minorities ("Sub-Commission").

Upon receiving this request, the Court decided that the United Nations and the States parties to the General Convention are likely to be able to furnish information on the question submitted to the Court. By its Order of 14 June 1989, the Court has fixed 31 July 1989 as the time limit within which written statements may be submitted to the Court, in accordance with Article 66 of the Statute of the Court, and 31 August 1989 as the time limit within which States and organizations having presented written statements may submit written comments on other written statements, in accordance with Article 66, paragraph 4, of the Statute of the Court. The present statement will examine the facts and the legal issues to which this request for an advisory opinion gives rise.

The General Convention accords various privileges and immunities to the United Nations as an organization, to representatives of Members of the United Nations, to United Nations officials and to experts on missions for the United Nations. Article VI, Section 22, of the General Convention specifically requires States parties to accord to "experts (other than officials coming within the scope of Article V) performing missions for the United Nations" such privileges and immunities as are necessary for the independent exercise of their functions, and sets out what those privileges and immunities are "in particular".

The question of the applicability of Article VI, Section 22, of the General Convention to the case of Mr. Mazilu is one that is important not only to ECOSOC and the Sub-Commission, but also to the United Nations, to all of its subsidiary organs and to the Member States of the United Nations. The question arises in the context of the inability of Mr. Mazilu, a Romanian national resident in Romania, to fulfil his functions as an expert performing a mission for the Sub-Commission due to the actions of the Government of Romania, a State party to the General Convention.

The question thus touches upon sensitive issues regarding the limits of a State's authority over its nationals (or residents) who serve as experts for the United Nations or its subsidiary organs. The United States believes that Article VI, Section 22, applies to the case of Mr. Mazilu and obligates Romania to permit communications between Mr. Mazilu and the United Nations and to allow Mr. Mazilu to perform his mission as a special rapporteur for the Sub-Commission which, as the record in this case reflects, requires that he be permitted to travel to Geneva.

The United States believes that circumstances may arise under which a State may justifiably exercise jurisdiction over its nationals serving as experts of the United Nations in a way that may restrict the ability of such individuals to perform their mission [1]. In the circumstances of this case, however, the Court need not address difficult questions relating to the limits of a State's sovereign authority to assert jurisdiction over its resident nationals who are seeking to perform as United Nations experts. The Government of Romania has prevented the United Nations and Mr. Mazilu from even communicating with each other and has prevented Mr. Mazilu from travelling to Geneva to fulfil his mission as Special Rapporteur of the Sub-Commission on a ground that Mr. Mazilu contests — that he is too ill to perform his mission. On this record, the Court need only determine that Mr. Mazilu, as a special rapporteur for the Sub-Commission, is entitled to the privileges and immunities set forth in Article VI, Section 22, and that the Government of Romania must accordingly allow him to communicate with the United Nations and to travel to Geneva to fulfil his mission.

A. The Court's Jurisdiction

Article 65, paragraph 1, of the Statute of the Court authorizes the Court to give an advisory opinion

> "on any legal question at the request of whatever body may be authorized by or in accordance with the Charter of the United Nations ['Charter'] to make such a request".

The United Nations General Assembly, pursuant to Article 96, paragraph 2, of the Charter, authorized ECOSOC "to request advisory opinions of the International Court of Justice on legal questions arising within the scope of the activities of the Council" [2].

The Sub-Commission is a subsidiary organ of ECOSOC. Pursuant to ECOSOC resolution 9 (II) (1946), the Commission on Human Rights ("Commission"), itself a functional commission of ECOSOC, established the Sub-Commission to undertake certain studies and to make recommendations to the Commission concerning the prevention of discrimination of any kind relating to human rights and fundamental freedoms and the protection of racial, national, religious and linguistic minorities, and to carry out any other functions entrusted to it by ECOSOC or by the Commission. Members of the Sub-Commission are nominated by Governments and are elected by the Commission, but serve in their personal capacity.

In fulfilling its task to undertake studies on specific subjects, the Sub-Commission regularly appoints "special rapporteurs" to carry out the necessary research and to report his or her findings to the Sub-Commission. Legal questions relating to the privileges and immunities to which such a special rapporteur is entitled while engaged in these activities are accordingly legal questions arising within the scope of the activities of the Sub-Commission and its parent body, ECOSOC. The Court therefore has jurisdiction under Article 65, paragraph 1,

[1] See p. 217, *infra*.
[2] G.A. res. 89 (I) (1946).

of its Statute to render an advisory opinion on the question presented to it by ECOSOC[3].

B. The Court's Discretion

The Court has repeatedly stated that, although its power to give advisory opinions under Article 65 of its Statute is discretionary, only compelling reasons would justify refusal of such a request[4]. This request for an advisory opinion, the first ever by ECOSOC, presents the Court with no compelling reason to refuse the request. Indeed, the humanitarian concerns underlying the request, as well as the necessity for the United Nations to ensure that its experts receive the privileges and immunities to which they are entitled, provide the Court with strong grounds to render the requested advisory opinion, and to render it on a priority basis in accordance with ECOSOC resolution 1989/75.

Factual Background

A. Appointment of Dumitru Mazilu as Special Rapporteur of the Sub-Commission

Dumitru Mazilu was elected in 1984 by the Commission to serve as one of the 26 members of the Sub-Commission until 31 December 1986[5]. During the second year of his term of office, the Sub-Commission adopted a resolution 1985/12 appointing Mr. Mazilu as a special rapporteur on human rights and youth, and requested him

> "to prepare a report on human rights and youth, analysing the efforts and measures for securing the implementation and enjoyment of human rights by youth, particularly the right to life, education and work, and to submit it to the Sub-Commission at its thirty-ninth [1987] session".

The Sub-Commission did not meet in 1986 due to financial constraints. On 6 February 1987, ECOSOC decided at its 1987 Organizational Session to extend

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[3] Section 30 of the General Convention provides for the referral of disputes between the United Nations and a Member State to the Court for an advisory opinion and that "the opinion of the Court shall be accepted as decisive by the parties". Romania has entered a reservation to the General Convention indicating that it does not consider itself bound by the provisions of Section 30. In the view of the United States, that reservation does not deprive the Court of jurisdiction to give an advisory opinion in response to a request from ECOSOC pursuant to Article 96 of the Charter. See Memorandum from the Legal Counsel, United Nations, to the Under-Secretary General for Human Rights, United Nations, 30 August 1988, entitled "Request for Legal Opinion on the Reservation made by Romania with respect to Section 30 of the Convention on the Privileges and Immunities of the United Nations".

[4] *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970), Advisory Opinion, I.C.J. Reports 1971*, p. 16, at p. 27; *Certain Expenses of the United Nations (Article 17, paragraph 2, of the Charter), Advisory Opinion, I.C.J. Reports 1962*, p. 151, at p. 155; *Judgments of the Administrative Tribunal of the ILO upon Complaints Made Against Unesco, Advisory Opinion, I.C.J. Reports 1956*, p. 77, at pp. 85-86.

[5] Commission on Human Rights, Report on the Fortieth Session (6 February-16 March 1984), pp. 24-25, *supra*.

the term of office of the current members of the Sub-Commission, including Mr. Mazilu, for one year[6].

Mr. Mazilu did not appear at the thirty-ninth (1987) Sub-Commission session. The Government of Romania informed the Sub-Commission that Mr. Mazilu had suffered a heart attack and that he would not be able to participate in the proceedings. In the absence of Mr. Mazilu, and with due knowledge of the fact that his term was to expire on 31 December 1987, the Sub-Commission adopted decision 1987/112 on 4 September 1987, by which it deferred until its fortieth (1988) session consideration of the agenda item under which Mr. Mazilu was to have presented his report on human rights and youth. The Sub-Commission also included on its provisional agenda for its fortieth session a reference to Mr. Mazilu's report, and included that report on a list of studies under preparation by members of the Sub-Commission to be submitted at the fortieth session.

B. Actions by the Government of Romania to Prevent Dumitru Mazilu from Fulfilling His Duties as Special Rapporteur

At the February-March 1988 session of the Commission, the Government of Romania did not nominate Mr. Mazilu for re-election to the Sub-Commission, but instead nominated Ion Diaconu, who was elected. Shortly after his election, Mr. Diaconu presented to the Chairman of the Sub-Commission a report on human rights and youth. The United Nations Secretariat refused to circulate this report, however, on grounds that Mr. Diaconu's election to the Sub-Commission had no bearing on the continuing appointment of Mr. Mazilu as the Special Rapporteur charged with preparing and presenting the report on human rights and youth[7].

In April and May 1988, Mr. Mazilu transmitted to the United Nations Secretariat in Geneva a preliminary draft of his report on human rights and youth, and indicated that he wished to come to Geneva in August to present his finalized report at the fortieth session of the Sub-Commission. At the beginning of its fortieth session, the Sub-Commission invited all its special rapporteurs, including Mr. Mazilu, to attend.

In a letter dated 11 August 1988, delivered to the Chairman of the Sub-Commission by a personal intermediary, Mr. Mazilu described his situation as follows:

> "I would like to inform you that I am ready to come to the present session of the Sub-Commission any time. I have no personal problems which can prevent me to come to Geneva in order to finalize and to submit my report to the Sub-Commission.
>
> There is only one official problem: I need the approval of my authorities, which since 5 May '86 persistently have refused me permission to come to Geneva.

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[6] ECOSOC decision 1987/102.

[7] See Memorandum of 23 August 1988 from the United Nations Office of Legal Affairs to the Director-General, United Nations Office at Geneva entitled, "Question of the applicability of the Convention on the Privileges and Immunities of the United Nations to the situation of Mr. Dumitru Mazilu charged by the Sub-Commission on the Prevention of Discrimination and Protection of Minorities in its resolution 1985/12 with the preparation of a report on human rights and youth", p. 83, *supra*.

Dear Mr. Chairman, Dear Colleagues and Friends,

Please inform the Romanian authorities and their special expert to the Sub-Commission that to prepare and to submit a report on human rights and youth is an important international task, but in no case a political crime.

In conformity with the provisions of the UN Charter, the pertinent resolutions of the General Assembly, of the Economic and Social Council and the Commission on Human Rights and its Sub-Commission, every Member State has the duty to facilitate the work of a United Nations special rapporteur and not to prevent it.

Consequently, please ask the Romanian authorities to put an end to the repressive measures and police terror against my family.

I am determined to do everything possible to fulfil to the best of my ability my task as a UN special rapporteur on human rights and youth.

It is my firm conviction that this will serve the noble cause of human rights in our complex and contradictory world.

So help me God."

The Government of Romania, however, did not permit Mr. Mazilu to appear at the fortieth session of the Sub-Commission. In light of his absence, the Sub-Commission adopted decision 1988/102 on 15 August 1988, by which it requested the United Nations Secretary-General

> "to establish contact with the Government of Romania and to bring to the Government's attention the Sub-Commission's urgent need to establish personal contact with its Special Rapporteur, Mr. Dumitru Mazilu, and to convey the request that the Government assist in locating Mr. Mazilu and facilitate a visit to him by a member of the Sub-Commission and the Secretariat to help him in the completion of his study on human rights and youth, if he so wishes".

In response to this decision, the Government of Romania transmitted the following communication to the Sub-Commission on 17 August 1988:

> "Mr. Mazilu had been ill for some time and had retired from the Foreign Ministry, who had so informed the Commission and Sub-Commission in Geneva. He was thus unable to proceed with the preparation of the report on human rights and youth. The Government had not presented him as a candidate for re-election to the Sub-Commission. The Secretariat had no juridical basis to intervene in a matter between a citizen and his Government. Moreover, there was no basis for any form of investigation in Bucharest, which would constitute interference in internal affairs. The Romanian Government rejected *[sic]* the request to allow a visit to Mr. Mazilu by a member of the Sub-Commission and the Secretariat for the reasons given above."

Two days later, Mr. Mazilu wrote a letter to Jan Martenson, Director-General of the United Nations Office at Geneva, in which he stated. "I would like to inform you that I am ready to come any time to Geneva to submit my report".

In the opinion of 23 August 1988, requested by the Sub-Commission, the United Nations Office of Legal Affairs issued an opinion concerning the privileges and immunities to which Mr. Mazilu is entitled as a special rapporteur of the Sub-Commission. In particular, this opinion concluded that:

"Mazilu appears to have a valid assignment from the Sub-Commission and, when working or attempting to work on that assignment, is therefore performing a task or mission for the United Nations. He should thus be considered an expert on a mission for the United Nations within the meaning of Article VI. Romania became a party to the General Convention on 8 July 1956 without any reservation to Article VI. Accordingly, Romania must accord to Mazilu privileges and immunities necessary for the independent exercise of his functions during the period of his assignment, including time spent on journeys in connection with his mission. He is also to be accorded immunity from legal process even after completion of his assignment."

On 1 September 1988, the Sub-Commission adopted resolution 1988/37 asserting that Mr. Mazilu, "in his continuing capacity of Special Rapporteur", continued to enjoy the privileges and immunities accorded under Article VI, and urging the Government of Romania to allow Mr. Mazilu to complete and present his report on human rights and youth to the Sub-Commission. In the event that the Government of Romania failed to do so, the resolution invited the Commission to urge ECOSOC to request an advisory opinion from the Court on the applicability of the relevant provisions of the General Convention to the present case.

The Government of Romania did not comply with this request of the Sub-Commission. On 6 March 1989, the Commission adopted resolution 1989/37, in which it concurred with the view expressed by the Sub-Commission in its resolution 1988/37 that, in his continuing capacity as a special rapporteur, Mr. Mazilu enjoys privileges and immunities accorded under Article VI of the General Convention necessary for the performance of his duties. The resolution also recommended that ECOSOC adopt a resolution concluding that a difference has arisen between the United Nations and the Government of Romania and requesting an advisory opinion from the Court.

The Government of Romania continued to prevent Mr. Mazilu from fulfilling his functions as a special rapporteur. On 24 May 1989, ECOSOC acted upon this recommendation of the Commission and adopted resolution 1989/75 requesting the advisory opinion presently at issue.

Applicability of Article VI, Section 22, of the Convention on the Privileges and Immunities of the United Nations

A. As a Special Rapporteur of the Sub-Commission Dumitru Mazilu is an Expert on a Mission for the United Nations within the Meaning of Article VI

The first issue arising in regard to the applicability of Article VI, Section 22, in the case of Mr. Mazilu is whether Mr. Mazilu is an expert on a mission for the United Nations within the meaning of Article VI of the General Convention. The General Convention without question applies to the Sub-Commission, a subsidiary organ of ECOSOC. ECOSOC, acting under authority granted to it by Article 68 of the Charter[8], created the Commission on Human Rights

[8] Article 68 of the Charter provides that ECOSOC

"shall set up commissions in economic and social fields and for the promotion of human rights, and such other commissions as may be required for the performance of its functions".

and authorized the Commission to establish the Sub-Commission[9]. The Sub-Commission is thus a body established by virtue of powers conferred by the Charter.

Article V of the General Convention applies to individuals specified by the United Nations Secretary-General, usually members of the Secretariat who represent the United Nations in their official capacity. Article VI, by contrast, may be read to apply to individuals who have been appointed or elected under the auspices of the United Nations or one of its organs to perform a specific mission, but who serve in their personal capacity and do not officially represent a Member State of the United Nations.

Special rapporteurs appointed by the Sub-Commission are similarly experts on missions for the United Nations. The Sub-Commission appoints individuals to be special rapporteurs to monitor worldwide compliance with human rights standards in that area or to collect data and produce reports on specialized topics within that area. While serving as Sub-Commission special rapporteurs, these individuals must act in their personal capacity, not as representatives of Governments.

As a member of the Sub-Commission, Mr. Mazilu was an "expert on a mission for the United Nations" within the meaning of Article VI of the General Convention by virtue of holding that office[10]. The provisions of Article VI also applied to Mr. Mazilu from the time the Sub-Commission appointed him as a special rapporteur on the topic of human rights and youth in 1985. Although the term of Mr. Mazilu as member of the Sub-Commission expired on 31 December 1987, his appointment as Special Rapporteur continued after that date. The decision of the Sub-Commission in September 1987 extending consideration of Mr. Mazilu's report until the Sub-Commission's 1988 session, with full knowledge that his term would expire before that time, effectively continued Mr. Mazilu's appointment as Special Rapporteur, and therefore as an expert on a mission for the United Nations, beyond the expiration of his term as a member of the Sub-Commission.

While some types of missions by their very nature are complete when a term of appointment expires, this is not the case in connection with missions involving the completion and submission of reports. In such cases, the expert involved may need additional time to complete the assignment, and the agency involved may — as in this instance — require the expert's participation in the consideration of the report when it is completed.

In short, Mr. Mazilu became an expert on a mission for the United Nations within the meaning of Article VI from the beginning of his term of office as a member of the Sub-Commission in 1984. His status as an expert on a mission for the United Nations continues by virtue of his ongoing assignment as Special Rapporteur for the Sub-Commission on human rights and youth, which the Sub-Commission concluded was necessary in order to permit him to complete and present the report he was assigned.

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[9] ECOSOC resolution 9 (II) (1946).

[10] Memorandum of 23 August 1988 from the United Nations Office of Legal Affairs to Director-General, United Nations Office at Geneva, *supra* note 7, at p. 82, *supra* ("members of the Sub-Commission, during their terms of office, are accorded the legal status of experts on mission for the United Nations within the meaning of Article VI of the 1946 Convention").

B. The Provisions of Article VI Apply as between Romania and Mr. Mazilu, a Romanian Resident National

Traditionally, the subjects of international law are States. The relationship between a State and its nationals has been viewed as an incident of the sovereignty of States, and accordingly outside the scope of international law. Certain exceptions, however, have been recognized, for example, in the area of human rights. An exception of particular relevance to this case has developed exclusively on the basis of the consent of States and relates to the relationship between a State and its nationals employed by international organizations. In the view of the United States, derogations of the sovereignty of the State over such nationals must be construed with appropriate respect for the sovereign rights of the State concerned as well as the objective of the fulfilment of the purposes of international organizations.

An analysis of the terms of Article VI, Section 22, of its history and the practice under the General Convention demonstrate that its provisions specifically obligate Romania, in the circumstances of this case, to permit the United Nations and Mr. Mazilu to communicate regarding Mr. Mazilu's mission for the Sub-Commission and to allow Mr. Mazilu to travel to Geneva to complete that mission.

The General Convention was intended to implement Article 105 of the Charter, which provides that officials of the Organization shall enjoy such privileges and immunities as are necessary for the independent exercise of their functions in connection with the Organization[11]. Article VI, Section 22, adds to those individuals who enjoy privileges and immunities necessary for the independent exercise of their functions

> "experts (other than officials coming within the scope of Article V) . . . during the period of their missions, including time spent on journeys in connection with their missions".

Section 22 enumerates the following specific privileges and immunities to which such experts are entitled:

> "*(a)* immunity from personal arrest or detention and from seizure of their personal baggage;
>
> *(b)* in respect of words spoken or written and acts done by them in the course of the performance of their mission, immunity from legal process of every kind. This immunity from legal process shall con-

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[11] While the drafters of Article 105 intended to ensure the free functioning of the organs of the United Nations and the independent exercise of the functions and duties of their officials, they intended that the General Assembly would clarify and define the privileges and immunities necessary to achieve that purpose. Article 105 specifically provides that the General Assembly

> "may make recommendations with a view to determining the details of the application of . . . this Article or may propose a convention to the Members of the United Nations for this purpose".

The Preparatory Commission, in approving Article 105, recommended that the General Assembly take such action at its first session and provided in its Report not only its study on privileges and immunities, but also a draft convention for the consideration of the General Assembly. That draft served as the basis of the General Convention. *Report of the Preparatory Commission of the United Nations*, London, 1945, Chap. VIII.

tinue to be accorded notwithstanding that the persons concerned are no longer employed on missions for the United Nations;

(c) inviolability for all papers and documents;

(d) for the purpose of their communications with the United Nations, the right to use codes and to receive papers or correspondence by courier or in sealed bags;

(e) the same facilities in respect of currency or exchange restrictions as are accorded to representatives of foreign governments on temporary official missions; and

(f) the same immunities and facilities in respect of their personal baggage as are accorded to diplomatic envoys."

The obligation to accord the specified privileges and immunities is unqualified. Section 22 makes no distinction between the privileges and immunities to be accorded experts who are nationals of a State party and those to be accorded to other experts. Moreover, it is clear that where the drafters of the General Convention intended to make such a distinction, they did so. Section 15 of the General Convention makes inapplicable "as between a representative and the authorities of the State of which he is a national" the privileges and immunities according to representatives of Members. Section 22 contains no comparable provision.

A textual analysis of the General Convention therefore demonstrates that the obligation of States parties to the Convention to accord the privileges and immunities under Article VI, Section 22, applies to their nationals who are experts on missions for the United Nations. The intention to make such privileges and immunities applicable in that situation is also reflected in the history of the Convention. With respect to the immunity of officials of the United Nations from suit or legal process, the United Nations Preparatory Commission stated in its study of privileges and immunities:

> "While it will clearly be necessary that all officials, whatever their rank, should be granted immunity from legal process in respect of acts done in the course of their official duties, *whether in the country of which they are nationals or elsewhere*, it is by no means necessary that all officials should have diplomatic immunity . . ."[12]

The subsequent practice of the parties to the General Convention also supports this view. At least eight States, including the United States, have become parties to the General Convention subject to reservations restricting or precluding the application of certain privileges and immunities as between those States and their nationals[13]. The reservation of the United States, for example, provides that,

> "Paragraph *(b)* of section 18 regarding immunity from taxation and paragraph *(c)* of section 18 regarding immunity from national service obligations shall not apply with respect to United States nationals and aliens admitted to permanent residence."

[12] *Report of the Preparatory Commission of the United Nations, supra* note 11, p. 62.

[13] One of those States subsequently withdrew that reservation. Romania, a State party to the General Convention, has entered no comparable reservation.

The United Nations and at least one State party to the General Convention informally expressed disagreement with the United States reservation and others like it. In their view, the obligation of States parties to accord all privileges and immunities to qualified persons, including their own nationals, was so central to the proper functioning of the United Nations as to make those reservations inconsistent with the object and purposes of the General Convention[14]. Both the reservations and the resulting responses, however, demonstrate the view that, in the absence of a reservation, the privileges and immunities accorded by the General Convention under Section 18 to officials apply as between a State party and its nationals. The same conclusion applies equally to experts under Section 22 of the General Convention.

It is clear from this analysis of the terms of Article VI, Section 22, and of its history and the practice that has evolved over the past 40 years, that States parties must accord the privileges and immunities set forth in that provision to its nationals who are experts on missions for the United Nations. The privileges and immunities a State party must accord to experts who are its nationals are, of course, qualified in accordance with the general principles which informed the drafting of the General Convention. One such principle was that "no official can have, in the country of which he is a national, immunity from being sued in respect of his non-official acts and from criminal prosecution"[15].

Thus, for example, if an individual serving as an expert were convicted of a serious non-political crime unrelated to the United Nations mission in the State of which he was a national, that State would retain a sovereign right to imprison him even if this restricted his ability to perform his mission for the United Nations. In such a case, the State of nationality would be obliged to afford the expert as full an opportunity to perform his mission as the circumstances reasonably would allow, but travel outside the State's jurisdiction and custody would not necessarily be required.

Mr. Mazilu has not been prosecuted for, or even accused of, any crime. Therefore, in the view of the United States, the refusal of the Government of Romania to allow Mr. Mazilu to travel to Geneva, in the circumstances of the instant case, violates subsection *(a)* of Section 22, which obligates Romania to accord Mr. Mazilu immunity from detention for the purpose of performing his official acts, i.e., the preparation and presentation of his report. The Government of Romania refuses to grant Mr. Mazilu the necessary official authorization to travel to Geneva to perform his mission for the United Nations. In that respect, the Government of Romania continues to detain Mr. Mazilu in Romania. In addition, the refusal of the Government of Romania to allow the United Nations and Mr. Mazilu to communicate, in the circumstances of the instant case, violates subsection *(d)* of Article VI, Section 22, obligating the Government of Romania to accord Mr. Mazilu the right to communicate with the United Nations.

Conclusion

Article VI, Section 22, of the Convention on the Privileges and Immunities of the United Nations applies in the case of Dumitru Mazilu, as Special Rap-

[14] See, e.g., Note No. 3822 from the Permanent Representative of the Kingdom of the Netherlands to the United Nations to the Secretary-General of the United Nations, date 13 October 1970.

[15] *Report of the Preparatory Commission of the United Nations, supra* note 11, p. 62.

porteur of the Sub-Commission on Prevention of Discrimination and Protection of Minorities. Pursuant to Article VI, Section 22, the Government of Romania is obligated to permit communications between Mr. Mazilu and the United Nations and to allow Mr. Mazilu to travel to Geneva to perform his mission for the Sub-Commission.

WRITTEN STATEMENT OF THE GOVERNMENT OF CANADA

Pursuant to the provisions of Article 66 (2) of the Statute of the International Court of Justice, and in response to the invitation addressed to the Government of Canada by the Registrar of the International Court of Justice in his letter of 14 June 1989, the Government of Canada wishes to submit certain general comments on the legal question of the applicability of Article VI, Section 22, of the Convention on the Privileges and Immunities of the United Nations in the case of Mr. Dumitru Mazilu, as Special Rapporteur of the Sub-Commission on Prevention of Discrimination and Protection of Minorities.

The Government of Canada considers a determination of this legal question by the Court, in response to a request for an advisory opinion by the United Nations Economic and Social Council, to be clearly within the jurisdiction of the Court, and an appropriate exercise of that jurisdiction, notwithstanding the Romanian reservation to the Convention on the Privileges and Immunities of the United Nations, or statements of the Government of the Socialist Republic of Romania to the effect that the Convention is not applicable.

The Government of the Socialist Republic of Romania, as a party to the Convention on the Privileges and Immunities of the United Nations, is under an obligation to respect the privileges and immunities of experts performing missions for the United Nations. The United Nations Economic and Social Council, in its resolution 1989/75, accepted the view that Mr. Mazilu was an expert acting on behalf of the United Nations and entitled to the immunities in Article VI, Section 22, of the above Convention. Such an expert acts for the United Nations in an individual capacity and is in no way a representative of any State. In order to properly fulfil his function, an expert must be able to act with independence and impartiality. The immunities listed in Article VI, Section 22, exist in order to ensure that an expert can fulfil his function in this manner. It is inappropriate for a State to purport to determine the expert status of an individual under the above Convention by means of an arbitrary and unilateral decision. Furthermore, without access to Mr. Mazilu, the United Nations is incapable of determining whether the privileges and immunities of Mr. Mazilu have been, or are being, breached.

Noting that Article VI, Section 23, of the Convention on the Privileges and Immunities of the United Nations states that the privileges and immunities of experts described in Article VI, Section 22, "are granted to experts in the interest of the United Nations", the Government of Canada considers it fundamental to the effective functioning of the United Nations that the Organization, through its Secretariat not be arbitrarily denied access to experts performing missions on its behalf. By denying such access, a State frustrates the object and purpose of the Convention by withholding information necessary to determine the existence of a breach of that Convention.

ADDITIONAL COMMENTS OF THE GOVERNMENT OF THE UNITED STATES OF AMERICA

Introduction

On 31 July 1989, in response to an Order of the International Court of Justice ("Court") dated 14 June 1989, the Government of the United States ("United States") submitted a written statement on the subject of this request by the United Nations Economic and Social Council ("ECOSOC") for an advisory opinion from the Court. The Governments of Canada, the Federal Republic of Germany, and Romania, as well as the Secretary-General of the United Nations, also submitted written statements in response to the Order of 14 June.

By the same Order, the Court fixed a time-limit of 31 August 1989, within which States and organizations having presented written statements may submit comments on other written statements. By this submission, the United States respectfully submits comments on the written statements submitted to the Court on 31 July 1989.

The United States disagrees with the assertions contained in the written statement submitted by the Government of Romania ("Romania") that the Court is without jurisdiction to render the requested advisory opinion as a consequence of the reservation that Romania entered in regard to Section 30 of the Convention on the Privileges and Immunities of the United Nations ("General Convention"), and that Article VI, Section 22, of the Convention does not apply to Mr. Mazilu because he is not an expert on a mission for the United Nations.

In regard to the Court's jurisdiction, the United States agrees with the arguments presented in the written statement submitted by the Secretary-General of the United Nations ("United Nations") that the Romanian reservation is not applicable to this request for an advisory opinion. ECOSOC did not request this advisory opinion under Section 30 of the General Convention, but rather pursuant to its independent authority deriving from the Charter of the United Nations ("Charter") and General Assembly resolution 89 (I). The United States maintains, moreover, that even were this request to have been made under Section 30, the Court would have jurisdiction since the Romanian reservation does not address requests for advisory opinions.

The arguments presented by Romania that Mr. Mazilu is not an expert on a mission for the United Nations for purposes of Article VI, Section 22, of the Convention are supported neither by the terms of that Article as they have been construed in the practice of the United Nations, nor by the facts of this case. Moreover, the information submitted to the Court by the United Nations pursuant to Article 65 of the Statute of the Court indicates that Romania has prevented Mr. Mazilu from travelling to Geneva to perform his mission for the United Nations by detaining him in Romania and suggests that Romania has prevented Mr. Mazilu and the United Nations from communicating regarding his mission.

For these reasons, the United States maintains that the Court has jurisdiction to render the requested advisory opinion and the provisions of Article VI, Section 22, of the General Convention apply in the case of Mr. Mazilu.

I. Jurisdiction of the Court

In its previous written statement, the United States demonstrated that the Court has jurisdiction under Article 65, paragraph 1, of its Statute to render an advisory opinion on the question presented, based upon the express authorization granted by the General Assembly to ECOSOC under Article 96, paragraph 2, of the Charter to request such advisory opinions[1]. The statement of Romania argues that Section 30 requires that all requests for advisory opinions pertaining to the General Convention be made under the authority of Section 30 and that, as a result of Romania's reservation, no request for an opinion in this matter could be made without Romania's consent. Romania is incorrect both as to the authority of ECOSOC to request an advisory opinion independent of the requirements of Section 30 of the General Convention and as to the legal effect of Romania's reservation in regard to Section 30.

A. The Court Has Jurisdiction to Render This Advisory Opinion under Article 96 of the Charter and United Nations General Assembly Resolution 89 (I)

Romania asserts that its reservation strips the Court of jurisdiction to render the advisory opinion in question without the consent of Romania, and that Romania has not granted such consent. In this respect, Romania argues that, were the Court to render the advisory opinion, it would "disturb the unity" of the General Convention by circumventing the dispute settlement provisions of that Convention[2].

Section 30 of the General Convention provides that:

> "All differences arising out of the interpretation or application of the present convention shall be referred to the International Court of Justice, unless in any case it is agreed by the parties to have recourse to another mode of settlement. If a difference arises between the United Nations on the one hand and a Member on the other hand, a request shall be made for an advisory opinion on any legal question involved in accordance with Article 96 of the Charter and Article 65 of the Statute of the Court. The opinion given by the Court shall be accepted as decisive by the parties."

Resolution 1989/75, by which ECOSOC requested this advisory opinion, does not rely upon Section 30 as the authority for its request, but relies entirely on Article 96, paragraph 2, of the Charter. Article 96, paragraph 2, provides that:

> "Other organs of the United Nations and specialized agencies, which may at any time be so authorized by the General Assembly, may also request advisory opinions of the Court on legal questions arising within the scope of their activities."

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[1] Written Statements of the Government of the United States of America ("Statement of the United States"), pp. 209-210, *supra*. In that statement, the United States also noted that the reservation of Romania to Section 30 of the General Convention does not deprive the Court of jurisdiction to render this advisory opinion. Statement of the United States, p. 210, fn. 3, *supra*.

[2] Memorandum of the Government of Romania relating to the Request for an Advisory Opinion transmitted to the International Court of Justice by virtue of resolution 1989/75 of the Economic and Social Council, dated 24 May 1989 ("Statement of Romania"), pp. 202-203, *supra*.

The General Assembly, pursuant to that Article, authorized ECOSOC to request advisory opinions of the Court on legal questions arising within the scope of the activities of the Council[3]. Section 30 of the General Convention, which also provides authority to request advisory opinions of the Court, does not render inoperative this independent authorization to request advisory opinions pursuant to Article 96 of the Charter[4].

The advisory opinion issued by the Court with respect to *Reservations to the Genocide Convention* fully supports this conclusion. In that case, the General Assembly of the United Nations requested the Court to respond to several questions concerning the effect of reservations to that Convention and of objections to those reservations. As a preliminary matter, the Court first considered whether Article IX of that Convention — which also calls for submission of disputes to the Court — prevented the Court from rendering the advisory opinion sought by the General Assembly:

> "The existence of a procedure for the settlement of disputes, such as that provided by Article IX, does not in itself exclude the Court's advisory jurisdiction, for Article 96 of the Charter confers upon the General Assembly and the Security Council in general terms the right to request this Court to give an Advisory Opinion 'on any legal questions' ".[5]

ECOSOC therefore has the authority to request an advisory opinion under both the General Convention and under the Charter, although only under the Convention could the resulting advisory opinion be "decisive". Accordingly, the mere existence of Section 30 does not deprive the Court of jurisdiction to render this advisory opinion pursuant to Article 96 of the Charter and General Assembly resolution 89 (I). It necessarily follows that Romania by its unilateral action in connection with the Convention could not prevent ECOSOC from requesting an advisory opinion in the exercise of its independent authority to make such a request pursuant to Article 96 of the Charter.

B. Romania's Reservation to Section 30 Does Not Affect the Jurisdiction of the Court to Render This Advisory Opinion

The reservation entered by Romania to Section 30 of the General Convention does not address requests for advisory opinions, only the effect to be given such opinions. The reservation provides that:

> "The Romanian People's Republic does not consider itself bound by the terms of Section 30 of the Convention which provide for the compulsory jurisdiction of the International Court of Justice in differences arising out of the interpretation or application of the Convention; with respect to the competence of the International Court in such differences, the Romanian People's Republic takes the view that, for the purpose of the submission of any dispute whatsoever to the Court for a ruling, the consent of all the parties to the dispute is required in every individual case. This reservation is equally applicable to the provisions contained in the said section which stipulate that the advisory opinion of the International Court of Justice is to be accepted as decisive."

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[3] G.A. res. 89 (I) (1946).

[4] Statement of the United States, pp. 216-217, *supra*.

[5] *Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide, Advisory Opinion, I.C.J. Reports 1951*, p. 15, at p. 20.

This reservation contains two sentences, neither of which applies to a request for an advisory opinion.

The first sentence of Romania's reservation specifically addresses only

> "the terms of Section 30 which provide for the *compulsory jurisdiction* of the International Court of Justice in differences arising out of the interpretation or application of the Convention" (emphasis added).[6]

It is in regard to the exercise of such compulsory jurisdiction that the first sentence goes on to assert the requirement for "the consent of all parties to the dispute". This is clear not only from the context in which this reservation is asserted, i.e., with reference to requirements of the first sentence of Section 30, but from the references in the reservation to "parties to the dispute". A request for an advisory opinion technically does not involve such "parties to the dispute".

The second sentence of the reservation addresses only the legal effect to be given to an advisory opinion rendered by the Court pursuant to that Section, specifically addressing the provisions contained in Section 30 which stipulate that "the advisory opinion . . . is to be accepted as decisive". Indeed, this aspect of the reservation, contrary to Romania's construction, clearly contemplates requests for advisory opinions under Section 30 and simply seeks to prevent the resulting opinions from being "accepted as decisive". While this part of Romania's reservation prevents advisory opinions issued under Section 30 from being "decisive" on the legal questions addressed in the opinions, it does not prevent the Court from rendering such advisory opinions in the first instance[7].

C. The Court Has Jurisdiction to Render This Advisory Opinion Whether or Not a Dispute Exists between the United Nations and Romania

Romania offers an additional challenge to the jurisdiction of the Court. In its written statement, Romania notes that Article VI, Section 22, provides experts with only functional privileges and immunities. Romania also notes that the privileges and immunities granted to experts apply only "during the period of their missions, including time spent on journeys in connection with their missions". Romania concludes that, because the "competent organs of the United Nations" have never interpreted Article VI, Section 22, differently, there is no basis for determining that a dispute has arisen between Romania and the United Nations with respect to the interpretation or application of the General Convention. In the absence of a dispute, Romania implies, the Court lacks jurisdiction[8].

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[6] The compulsory jurisdiction of the Court refers to the jurisdiction of the Court to entertain actions brought by one State party to the Convention against another State party. In the absence of a reservation, the Court would have jurisdiction under Section 30 to render a binding judgment on the parties.

[7] See Memorandum from the Legal Counsel, United Nations, cited in Statement of the United States, p. 210, footnote 3, *supra*. Moreover, were the Romanian reservation incorrectly construed to apply to a request for advisory opinions under Article 96 of the Charter, a possible conflict would arise between the General Convention and the Charter, in which case Article 103 of the Charter would become relevant. Article 103 provides that,

> "In the event of a conflict between the obligations of the Members of the United Nations under the present Charter and their obligations under any other international agreement, their obligations under the present Charter shall prevail."

See Memorandum from the Legal Counsel, *id.*, at pp. 85-86, *supra*.

[8] Statement of Romania, pp. 203-204, *supra*.

Neither the Charter nor the General Convention, however, establishes the existence of a dispute as a prerequisite to a request for an advisory opinion. Article 96, paragraph 2, of the Charter simply authorizes requests to the Court for advisory opinions on legal questions ; Article 65, paragraph 1, of the Statute of the Court gives the Court jurisdiction to render such opinions. As a result, the Court has jurisdiction to render the opinion requested by ECOSOC pursuant to Article 96 of the Charter whether or not a dispute exists.

Section 30 of the General Convention does not refer to "disputes" either, but instead provides that, if a "difference" arises between the United Nations and one of its Members, a request shall be made to the Court for an advisory opinion. In this regard, while Romania and the United Nations may share the same general view that the privileges and immunities provided experts under Article VI, Section 22, are functional in character, they manifestly disagree over the application of Article VI in the specific case of Mr. Mazilu as a special rapporteur. Romania appears to claim that this is merely "a difference of opinion" with respect to the "factual elements" of Mr. Mazilu's situation. However, the question of whether Mr. Mazilu is entitled to the privileges and immunities set forth in Article VI, Section 22, is a legal one which turns on an application of that provision to the facts of this case. In any event, because ECOSOC has not requested this advisory opinion under Section 30, the question of whether a "dispute" exists does not arise even under Romania's construction of its reservation to that provision of the General Convention.

II. Applicability of Article VI, Section 22, of the General Convention to Mr. Mazilu

In its initial statement, the United States demonstrated that: (1) the status of Mr. Mazilu as a special rapporteur of the Sub-Commission has not terminated; (2) in his continuing capacity as a special rapporteur of the Sub-Commission, Mr. Mazilu is an "expert on a mission for the United Nations" within the meaning of Article VI of the General Convention; and (3) Article VI requires all States parties to the General Convention, including Romania, to accord to Mr. Mazilu, as a special rapporteur, the privileges and immunities specified in Article VI, Section 22, of the General Convention[9].

The written statements of the United Nations, Canada and the Federal Republic of Germany, reach the same general conclusions[10]. Romania, however, disputes each of these points, arguing that: (1) Mr. Mazilu is no longer a special rapporteur of the Sub-Commission; (2) that such special rapporteurs are not "experts"; and (3) even if Mr. Mazilu were such an expert, Romania need not accord to him any privileges and immunities due to the fact that he is not actually on any mission in Romania. Romania is incorrect both as a matter of law and in regard to the application of the law to the circumstances of this case.

A. The Status of Mr. Mazilu as a Special Rapporteur of the Sub-Commission Has Not Terminated

Romania asserts that, due to serious health problems, Mr. Mazilu "was withdrawn from office as being unfit for service" at his own request as of

[9] Statement of the United States, pp. 213-218, *supra*.

[10] Statement of the United Nations, pp. 189-193, *supra*; Statement of Canada, p. 219, *supra*; Statement of the Federal Republic of Germany, p. 207, *supra*.

1 December 1987. In support of this assertion, Romania relies on an opinion issued by one of its State medical commissions in 1987, which was reaffirmed in 1988, on which the retirement of Mr. Mazilu is purportedly based. Romania concludes that "Romanian law does not authorize the employer or any other State body to fail to take account of doctors' opinions or to override those opinions"[11]. This argument fails on two grounds.

First, the status of Mr. Mazilu as a special rapporteur is wholly unrelated to his status as an employee of the Government of Romania. As a special rapporteur, Mr. Mazilu is required to serve in his personal capacity, not at the discretion of his Government. Hence, even if a Romanian medical commission determined that Mr. Mazilu must resign for health reasons from his position in the Romanian Government[12], this determination would not directly bear on his appointment as a special rapporteur for the Sub-Commission. Instead, any decision to terminate Mr. Mazilu's appointment as a special rapporteur would have to be made by the competent organs of the United Nations.

Second, the information before the Court demonstrates that Mr. Mazilu has not sought termination of his appointment as a special rapporteur. The documents provided to the Court by the United Nations pursuant to Article 65 of the Statute establish that Mr. Mazilu has repeatedly notified the Sub-Commission that he considers himself in sufficiently good health to perform his duties as a special rapporteur, and that he has every desire to complete his assignment[13]. In its initial statement, the United States cited two letters written by Mr. Mazilu to the United Nations in August 1988 in which he announced his readiness to complete his assignment as a special rapporteur. In the first of these letters, Mr. Mazilu made clear that the Government of Romania was preventing him from doing so[14]. The Statement of the United Nations cites these and several more letters from Mr. Mazilu to the same general effect[15].

In any event, the question of Mr. Mazilu's fitness to perform these duties is not one for Romania to decide. Mr. Mazilu remains an expert on a mission for the United Nations. In the absence of a clear indication by Mr. Mazilu that he has unilaterally terminated his status as an expert, only the competent organs of the United Nations are legally competent to take such action. They have not done so.

B. Special Rapporteurs of the Sub-Commission Are Experts on Missions for the United Nations

Romania does not view special rapporteurs as falling within the scope of Article VI of the General Convention. Instead, Romania argues that:

> "the Convention does not place rapporteurs, whose activities are occasional, on the same footing as the experts who carry out missions for the United Nations.

[11] Statement of Romania, p. 204, *supra*.

[12] Indeed, there is strong evidence to believe that Mr. Mazilu did not request, much less consent to, his retirement from the Romanian Government. Dossier submitted by the United Nations, 28 July 1989 ("United Nations Dossier"), document 96 (letter from Mr. Mazilu to President of the United Nations General Assembly and Chairman of the Sub-Commission states that "since 1 December 1987 I have been forced to retire from my activity as minister-counsellor and Head of Legal Department in the Ministry of Foreign Affairs").

[13] United Nations Dossier, documents 23, 31, 33, 34.

[14] Statement of the United States, pp. 211-214, *supra*.

[15] Statement of the United Nations, pp. 175, 180, *supra*; United Nations Dossier, documents 23, 31, 37, 92, 94, 96, *inter alia*.

> The very term 'experts' is employed in the Convention to distinguish those persons from 'officials' of the United Nations, who are engaged in an activity of a permanent nature."[16]

The United States agrees that the General Convention distinguishes between "experts on missions for the United Nations" and "officials of the United Nations". The United States also agrees that the relationships of experts with the United Nations tend to be less permanent than those enjoyed by officials of the Organization. These distinctions, however, have no relevance to the question of whether special rapporteurs of the Sub-Commission should be classified as experts. This question must instead be decided on the basis of Article VI. An analysis of Article VI, including the practice of the United Nations under that Article[17], demonstrates that special rapporteurs of the Sub-Commission are experts within the meaning of that Article[18].

The only ground on which Romania disputes this conclusion is that the activities of special rapporteurs are too "occasional". Nothing in the text of Article VI provides a basis for excluding special rapporteurs from the category of experts on this ground. Quite to the contrary, the "occasional" character of the activities of an expert is one of the primary factors for distinguishing experts from officials of the Organization.

C. As a Special Rapporteur, Mr. Mazilu Is Entitled to the Privileges and Immunities Specified in Article VI, Section 22

In its written statement, Romania does not actually dispute that, if Mr. Mazilu were still a special rapporteur, and were special rapporteurs experts within the meaning of Article VI, Romania must accord to Mr. Mazilu the privileges and immunities set forth in Section 22. Romania nevertheless implies that Mr. Mazilu never acted in his capacity as a special rapporteur while residing in Romania and that, as a result, Romania need never have accorded to him the privileges and immunities in question[19].

The mission of Mr. Mazilu began with his appointment by the Sub-Commission as Special Rapporteur on Human Rights and Youth in 1985. Although Mr. Mazilu may not have been engaged in his mission continuously from that time, the record demonstrates that: (1) he has spent time in Romania researching and drafting his report; (2) both he and the United Nations have sought to communicate with each other regarding the completion of his mission, and have been prevented from doing so by Romania; and (3) he has been prevented by Romania from travelling to Geneva to complete his mission[20].

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[16] Statement of Romania, p. 203, *supra*.

[17] Under customary international law, reference to the subsequent practice of the parties is pertinent to treaty interpretation. See Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations, Article 31, which codifies customary international law on this point; I. Sinclair, *The Vienna Convention on the Law of Treaties* 137 (2nd ed., 1984).

[18] Statement of the United States, pp. 213-214, *supra*; Statement of the United Nations, pp. 190-191, *supra*; Statement of Canada, p. 219, *supra*; Statement of the Federal Republic of Germany, p. 207, *supra*.

[19] Statement of Romania, p. 203, *supra* ("In so far as the expert's journey to carry out the mission for the United Nations has not begun, for reasons entirely unconnected with his activity as an expert, there is no legal basis upon which to lay claim to privileges and immunities under the Convention . . .").

[20] United Nations Dossier, documents 23, 31, 34, 37, 38, *inter alia*.

Hence, Mr. Mazilu has engaged or sought to engage in activities in Romania pertaining to his mission as a special rapporteur. In regard to such activities, Romania must accord Mr. Mazilu the privileges and immunities that are to be accorded to experts of the United Nations under the terms of Article VI, Section 22.

As the information provided to the Court by the United Nations demonstrates, Romania refuses to grant Mr. Mazilu the necessary official authorization to travel to Geneva to perform his mission for the United Nations. That information indicates that Romania has physically detained Mr. Mazilu by placing him under house arrest. In particular, document 96 of the United Nations Dossier contains a letter from Mr. Mazilu to the President of the United Nations General Assembly and the Chairman of the Sub-Commission, in which he states that, "My authorities have refused me again the approval to go to Geneva and have placed me under arrest at my home with a policeman in front of my door."[21] Such action by Romania, in the circumstances of the instant case, would appear to violate Article VI, Section 22, subsection *(a)*. The information provided to the Court by the United Nations also suggests that Romania has prevented the United Nations and Mr. Mazilu from communicating regarding his mission for the United Nations in violation of subsections *(c)* and *(d)* of Article VI, Section 22[22].

Conclusion

For these reasons, the United States reaffirms its view that the Court has jurisdiction to render the advisory opinion requested by ECOSOC and that the provisions of Article VI, Section 22, of the General Convention apply in the case of Mr. Dumitru Mazilu in his continuing capacity as Special Rapporteur for the Sub-Commission.

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[21] In other letters, Mr. Mazilu refers repeatedly to his "captivity". See e.g., United Nations Dossier, document 94 ("In spite of my captivity and many repressive measures against me and against my family, I continue to wait and hope").

[22] The United Nations Dossier contains information that suggests Romania may have violated subsection *(c)* by seizing official papers and documents sent by the United Nations to Mr. Mazilu. United Nations Dossier, document 96 (letter from Mr. Mazilu to United Nations Secretary-General and Chairman of the Sub-Commission, stating that "all my official correspondence from the UN has been confiscated by the Romanian secret police").

Similarly, the information provided by the United Nations demonstrates that Romania may have acted in violation of subsection *(d)* by refusing to allow United Nations couriers from Geneva to deliver papers to Mr. Mazilu and by preventing Mr. Mazilu from receiving papers sent specially to him by the United Nations Centre for Human Rights in Geneva through personnel in the United Nations Information Centre in Bucharest. United Nations Dossier, document 64 (summary record of the Sub-Commission meeting of 17 August 1988, in which the Under-Secretary-General for Human Rights describes the refusal of Romania to allow a member of the United Nations Secretariat in Geneva to visit Mr. Mazilu). See also United Nations Dossier, document 37 (letter from Mr. Mazilu to United Nations Under-Secretary-General for Human Rights, stating that "my access to the UN Information Centre in Bucharest was blocked by police"); United Nations Dossier, documents 31 and 39 (letters from Mr. Mazilu to the same Under-Secretary-General stating, respectively, that "my foreign correspondence and foreign calls have been suspended"; and that "for me it is almost impossible to find out a way to send you my new chapter of my report").

EXPOSÉS ORAUX

PROCÈS-VERBAUX DES AUDIENCES PUBLIQUES

tenues au Palais de la Paix, à La Haye, les 4 et 5 octobre et le 15 décembre 1989, sous la présidence de M. Ruda, Président

ORAL STATEMENTS

MINUTES OF THE PUBLIC SITTINGS

held at the Peace Palace, The Hague, on 4 and 5 October and 15 December 1989, the President, Judge Ruda, presiding

PREMIÈRE AUDIENCE PUBLIQUE (4 X 89, 10 h)

Présents: M. RUDA, *Président*; MM. LACHS, ELIAS, ODA, AGO, SCHWEBEL, sir Robert JENNINGS, MM. BEDJAOUI, NI, EVENSEN, TARASSOV, GUILLAUME, SHAHABUDDEEN, PATHAK, *juges*; M. VALENCIA-OSPINA, *Greffier*.

Présents également:

Pour l'Organisation des Nations Unies:

M. Carl-August Fleischhauer, Secrétaire général adjoint aux affaires juridiques, conseiller juridique;
M. Paul C. Szasz, ancien adjoint du Secrétaire général adjoint, consultant;
M. Roy S. Lee, administrateur général, juriste;
Mme Marcia Y. Constable, assistante personnelle du Secrétaire général adjoint.

Pour le Gouvernement des Etats-Unis d'Amérique:

l'honorable Abraham D. Sofaer, conseiller juridique au département d'Etat;
M. Bruce C. Rashkow, bureau du conseiller juridique au département d'Etat.

OUVERTURE DE LA PROCÉDURE ORALE

Le PRÉSIDENT : Avant d'en venir à l'affaire qui nous occupe aujourd'hui, je voudrais signaler que M. Mbaye, Vice-Président, ne pourra, pour des raisons de santé, assister aux audiences.

La Cour est réunie ce jour pour entendre, conformément à l'article 66, paragraphe 2, de son Statut, des exposés oraux relatifs à la requête pour avis consultatif dont le Conseil économique et social l'a saisie par sa résolution 1989/75 en date du 24 mai 1989 (ci-dessus p. 3-7). Je prierai le Greffier de bien vouloir donner lecture du paragraphe 2 de ladite résolution, qui indique la question sur laquelle l'avis de la Cour est demandé.

Le GREFFIER :

« Le Conseil économique et social,

. . . . . .

2. *Demande* à titre prioritaire à la Cour internationale de Justice, en application du paragraphe 2 de l'article 96 de la Charte des Nations Unies et conformément à la résolution 89 (I) de l'Assemblée générale, en date du 11 décembre 1946, un avis consultatif sur la question juridique de l'applicabilité de la section 22 de l'article VI de la convention sur les privilèges et immunités des Nations Unies au cas de M. Dumitru Mazilu en sa qualité de rapporteur spécial de la Sous-Commission. »

Le PRÉSIDENT : Comme le prescrit l'article 66, paragraphe 1, du Statut, le Greffier a immédiatement notifié la requête pour avis consultatif, transmise à la Cour par une lettre du Secrétaire général en date du 1er juin 1989, à tous les Etats admis à ester devant la Cour. En outre, en application de l'article 66, paragraphe 2, du Statut, l'Organisation des Nations Unies et les Etats parties à la convention sur les privilèges et immunités des Nations Unies ont été avisés qu'ils étaient jugés susceptibles de fournir des renseignements sur la question soumise à la Cour pour avis consultatif et que celle-ci était disposée à recevoir des exposés écrits et des observations écrites ainsi qu'il était indiqué dans une ordonnance du 14 juin 1989[1]. Aux termes de cette ordonnance, qui précisait qu'il était nécessaire, pour fixer les délais de procédure, de tenir compte du fait que la requête pour avis consultatif avait été expressément présentée « à titre prioritaire », les délais suivants étaient fixés : le 31 juillet 1989 pour la présentation à la Cour d'exposés écrits conformément à l'article 66, paragraphe 2, du Statut et le 31 août 1989 pour la présentation à la Cour, par les Etats ou organisations qui auraient présenté un exposé écrit, d'observations écrites sur les autres exposés écrits conformément à l'article 66, paragraphe 4, du Statut.

Dans le premier délai, des exposés écrits ont été présentés, outre par le Secrétaire général de l'Organisation des Nations Unies, par les Gouvernements de l'Allemagne (République fédérale d'), du Canada, des Etats-Unis d'Amérique ainsi que de la République socialiste de Roumanie (ci-dessus p. 173-219); dans le second délai, des observations écrites sur ces exposés écrits ont été présentées par le Gouvernement des Etats-Unis d'Amérique (ci-dessus p. 220-227). Le

[1] *C.I.J. Recueil 1989*, p. 9.

Secrétaire général des Nations Unies a par ailleurs adressé à la Cour, en application de l'article 65, paragraphe 2, du Statut, un dossier de documents (ci-dessus p. 11-170) pouvant servir à élucider la question ; ce dossier est parvenu à la Cour en plusieurs envois.

Conformément à l'article 106 de son Règlement, la Cour a décidé que les exposés écrits et les observations écrites présentés en l'espèce seraient rendus accessibles au public à l'ouverture de la procédure orale.

L'Organisation des Nations Unies et les Etats parties à la convention sur les privilèges et immunités des Nations Unies ont été informés de la date d'ouverture des audiences, ainsi que de la possibilité de prendre la parole devant la Cour. Seuls le Secrétaire général de l'Organisation des Nations Unies et le Gouvernement des Etats-Unis d'Amérique, dont je constate la présence des représentants à l'audience, ont fait savoir qu'ils entendaient présenter des exposés oraux. Je donne en conséquence la parole à M. Fleischhauer, conseiller juridique de l'Organisation des Nations Unies ; la Cour entendra ensuite M. Sofaer, conseiller juridique au département d'Etat des Etats-Unis d'Amérique.

ORAL STATEMENT BY MR. FLEISCHHAUER

LEGAL COUNSEL OF THE UNITED NATIONS

Mr. FLEISCHHAUER: Mr. President, Members of the Court.

1. It is a great honour for me to be given the opportunity to address the International Court of Justice in order to assist it in responding to a legal question of particular importance and interest to the United Nations. The question addressed to the Court by the Economic and Social Council, which has for the first time made use of an authorization granted to it by the General Assembly pursuant to paragraph 2 of Article 96 of the United Nations Charter, concerns the status of "experts on missions for the United Nations" within the general régime of the privileges and immunities of the Organization.

2. The Secretary-General is of course keenly aware of the human rights dimension of Mr. Mazilu's situation, which was underlined by a recent decision of the Sub-Commission — to which I will revert — to refer this matter to its Special Rapporteur on the human rights of United Nations staff members, experts and their families. The question posed by the Council concerns solely the related and equally relevant issue of the applicability of the Convention on Privileges and Immunities of the United Nations (the so-called "General Convention") to Mr. Mazilu, and it is in this context that I will address the Court.

3. I do not intend to repeat either the summary of the facts or the legal arguments set out in the written statement of 28 July 1989 submitted on behalf of the Secretary-General of the United Nations. Rather, I would like first to bring the Court up to date on the relevant developments in the present case subsequent to the request for an advisory opinion by the Economic and Social Council. Particular reference will be made to those developments which took place during the forty-first session of the Sub-Commission on Prevention of Discrimination and Protection of Minorities held in Geneva in August. I will then turn to some of the legal issues raised by the request in order to complement the views expressed in the written statement, by addressing in turn the issues pertaining to: the competence of the Court; the concept of "experts on missions" under the General Convention; the privileges and immunities of such experts; the applicability of these privileges and immunities in relation to the country of an expert's nationality; and finally, the status of Mr. Mazilu as a Special Rapporteur of the Sub-Commission.

I. Updating the Factual Background

4. The summary of the facts giving rise to the request for an advisory opinion as contained in the written statement ended with a reference to the intention of the Secretary-General to publish the report prepared by Mr. Mazilu in preliminary form as a document of the forty-first session of the Sub-Commission. In the event, the Secretariat, in issuing the report as document E/CN.4/Sub.2/1989/41, did not characterize it as preliminary. Rather, the Secretary-General stated in an introductory note, on page 144, *supra*, of that document:

> "The Secretary-General again sought unsuccessfully to contact Mr. Mazilu with regard to the presentation and editing of his report. Not being able to discuss with him these matters, the present report is published as received."

As also mentioned in that note, a text received from Mr. Mazilu covering "A Special View on the Romanian Case" was issued as an addendum to the report.

5. The forty-first session of the Sub-Commission extended from 7 August to 1 September 1989. At its first meeting, on 7 August, the temporary Chairman informed members of the Sub-Commission about the latest developments concerning Mr. Mazilu. In particular, he had received a letter from Mr. Mazilu stating that he had been in captivity in 1986 and that his life and that of his wife were in danger. The temporary Chairman also reported that Mr. Mazilu had submitted his study. He suggested that Mr. Mazilu's letter and study be discussed later under the appropriate agenda item.

6. At its second meeting, on 8 August, the Sub-Commission, in accordance with its established practice, invited Mr. Mazilu to participate in the meetings at which his report was to be considered. Mr. Diaconu, the Romanian member of the Sub-Commission, found such an invitation inappropriate.

7. At its tenth meeting, on 14 August, the Secretariat reported to the Sub-Commission its inability to reach Mr. Mazilu either by cable or by telephone or through the United Nations Office in Bucharest.

8. On 15 August, the Permanent Mission of Romania to the United Nations Office at Geneva requested the circulation of a Note Verbale addressed to the Centre for Human Rights as a document of the Sub-Commission. In this note, the Romanian Mission expressed its surprise at the Secretariat's decision to publish the report and, *inter alia*, questioned Mr. Mazilu's "intellectual capacity" to make an "objective analysis". Certain excerpts from Mr. Mazilu's previous publications in Romania were annexed to this note to demonstrate the contrast to Mr. Mazilu's present views.

9. On various occasions, throughout the session of the Sub-Commission, Mr. Mazilu's absence was commented on by members of the Sub-Commission. The principal discussion on Mr. Mazilu's situation took place on 30 August in connection with item 15 *(b)* of the agenda, to which Mr. Mazilu's report pertained. Mr. Diaconu spoke in most critical terms of the nature and content of Mr. Mazilu's report, as well as the manner in which the Secretariat had handled it. A reply was made by the Under-Secretary-General for Human Rights. Several members of the Sub-Commission participated in the debate.

10. At the close of the session, the Sub-Commission, on 1 September, adopted resolution 1989/46, whereby it requested Mr. Mazilu to update his report and to present it in person at its forty-second session in 1990. The Secretary-General was requested to continue to gather and furnish information to Mr. Mazilu for his study, and to provide him with all necessary assistance. The Sub-Commission also expressed its deep concern at the reports of the personal situation of Mr. Mazilu and his family, and requested the Secretary-General to follow the situation closely, and to inform the Sub-Commission's Special Rapporteur on the human rights of United Nations staff members, experts and their families. The latter was requested to report to the Sub-Commission on this matter at its next session, and meanwhile to present a note on the situation of Mr. Mazilu to the Commission on Human Rights at its forty-sixth session in 1990. Finally, the Sub-Commission decided to consider Mr. Mazilu's updated report at its next session.

11. Documents relating to all the events to which I have just referred have been included by the Secretariat in Part V of the Dossier of official documents relating to the question addressed by the Economic and Social Council to the Court. This latest instalment was transmitted to the Registry over this past week-end.

II. The Competence of the Court

12. Turning now to the legal questions raised by the request for an advisory opinion, I would now like to refer to the questions relating to the competence of the Court to accept the request for an advisory opinion. Here, I first hasten to make clear that the events which have occurred since the request was addressed to the Court do not in any way impair its competence to deal with the request. Throughout the recent session of the Sub-Commission, it was made clear that Mr. Mazilu continues to be the Special Rapporteur on Human Rights and Youth, whose presence is necessary for the presentation and discussion of his report. The view of the Sub-Commission on this matter is further expressed in the resolution adopted at its forty-first session, which I have just cited. It is, therefore, the Secretary-General's position that, notwithstanding the publication of a report submitted by Mr. Mazilu, the question upon which the Court is requested to give its advisory opinion continues to be unresolved and is by no means "moot". The Council's question centres on Mr. Mazilu's status as a Special Rapporteur of the Sub-Commission, which is of continued relevance to that body. Although Mr. Mazilu has now submitted a report, the question whether Article VI of the General Convention is applicable to him is still of interest to the Council and of importance to the Organization.

13. It should also be pointed out that even though Mr. Mazilu did submit a report, this was done two years after it had initially been expected, and of this delay at the utmost one year can be attributed to any medical problems. Moreover, in preparing his report, Mr. Mazilu did not have the benefit of normal collaboration with the secretariat of the Centre for Human Rights, either in Geneva or in Bucharest. Nor does it appear that he received all the materials the Centre had forwarded to assist him in preparing his report.

14. I would next like to make some additional remarks on the objections to the Court's competence in this matter as set out in the written statement submitted by Romania. The Court is naturally aware that at several stages, that is, in the Sub-Commission, in the Commission on Human Rights and in the Economic and Social Council, as well as in its written statement addressed to the Court, the Romanian Government has objected to the right of the Council to address its request to the Court, as well as the Court's competence to respond to it. The Government's objection is based on a reservation that it formulated to Section 30 of the General Convention at the time it acceded to that instrument. That reservation forms in Romania's view, an integral part of the expression of its consent to be bound by the Convention, any disregard of which would disrupt the unity of that instrument.

15. It is the Secretary-General's position that this reservation does not apply to the present request; thus Romania's obligation under the Convention, as well as the Council's right to request an advisory opinion and the Court's competence to respond thereto, remain unaffected. This position is founded on a number of considerations. In the first place, the authority of the Economic and Social Council, a principal organ of the United Nations, to request advisory opinions from the Court, is based solely on paragraph 2 of Article 96 of the Charter and on an authorization, pursuant to that paragraph, that the General Assembly granted to the Council in 1946 by its resolution 89 (I). Section 30 of the General Convention — which foresees recourse to the advisory procedure under certain circumstances and to which the Romanian reservation relates — is in no way the source of the Council's authority to address legal questions to the Court. Section 30 prescribes that if a difference regarding the Convention should arise between a Member State and the Organization, that difference shall be resolved

with *binding effect* by having a duly authorized United Nations organ request and receive an advisory opinion from the Court. In the present instance, ECOSOC, which was of course aware of the Romanian reservation, did not attempt to make use of this provision of the General Convention to settle the difference that it found had arisen between Romania and the United Nations; it merely requested the Court to give a non-binding advisory opinion on a particular legal question.

16. This characterization of the Council's intention is reinforced by the consideration that the Council did not request the Court to determine what the Government's obligations were vis-à-vis Mr. Mazilu under the Convention, and whether or not the Government had violated these obligations. Rather, it posed a legal question concerning the difference it found had arisen, the answer to which is of considerable interest to the Council and to the Organization as a whole. If the non-binding advice expected from the Court helps to resolve the difference, so much the better — but the Council's request was not conditioned on such an expectation.

17. The Romanian Government takes a different view of this matter since it appears to assert that its reservation to the General Convention somehow negates the authority of the Economic and Social Council to exercise its Charter-derived and General Assembly-approved authorization to address the Court. But this assertion is one that cannot be accepted either in logic or in law.

18. In the first place, it would mean that if the General Convention had no disputes-settlement clause at all, then the ECOSOC, or the Assembly itself, would be free, pursuant to Charter Article 96, to address to the Court legal questions concerning that instrument. But as it does contain such a clause and a Government has attempted to neutralize it by a reservation, it is claimed that the Council and the Assembly are thereby paralysed: they can no longer secure from the Court any advice concerning the Convention, as long as that advice might relate to a position that the reserving State has taken. The Court will recall that in its advisory opinion on *Reservations to the Genocide Convention* it disposed of a similar argument by pointing out that the mere fact that an instrument contained a disputes clause did not mean that a competent United Nations organ could not request an advisory opinion on some legal question concerning that instrument.

19. Furthermore, such a conclusion would appear to place the Romanian reservation above the Charter itself, which foresees that authorized organs of the United Nations should be able to secure legal opinions from the Court on matters within the scope of their activities. Not even a solemn treaty could, pursuant to Article 103 of the Charter, negate the effect of Article 96; how then could a mere unilateral reservation to a treaty have such a powerful negative effect?

20. In addition, it should be noted that the very terms of the Romanian reservation do not appear to extend nearly as far as that Government now contends. The first sentence of the reservation seems to refer solely to the first sentence of Section 30 of the General Convention, dealing with disputes that might arise between States parties to the Convention and which, failing another mode of settlement, are to be brought to the Court under Article 36 (1) of its Statute. As to the remaining part of Section 30, namely the one dealing with differences between the Organization and a Member State, the Romanian reservation merely would deprive any advisory opinion obtained of its otherwise decisive or binding quality. In other words, the text of the reservation does not prevent the Organization from requesting an advisory opinion; it merely states that such an opinion cannot, without the consent of Romania, have a binding effect.

21. At the very least, the text of the reservation is ambiguous. As it is, in effect, a unilateral instrument, it would seem inappropriate to interpret any ambiguity in favour of its author and against those who had nothing to do with its formulation. Furthermore, in light of the general encouragement in the Charter for the peaceful settlement of disputes, and in particular for the judicial settlement of legal disputes, ambiguities in texts relating to the peaceful settlement of disputes should not be interpreted in a manner that would unnecessarily diminish or constrain provisions that would provide for such a means of settlement.

22. The Romanian written statement also expresses the view that this Court lacks jurisdiction or competence in respect of the instant question because no dispute had arisen between the United Nations and Romania, with regard to the application and interpretation of the Convention, but perhaps only a difference of opinion as to the factual elements regarding Mr. Mazilu's ability to carry out his assignment. If one follows this argument, then of course Section 30 of the General Convention, as well as the Romanian reservation thereto, are entirely irrelevant, which coincides with the position that, albeit on other grounds, the United Nations has consistently taken. If, on the other hand, the argument is that the existence of a dispute is a prerequisite for the Court to be competent to reply to the Council's question, then this of course is not so, for the advisory competence of the Court is in no way tied to the existence of a dispute. Rather, paragraph 1 of Article 65 of the Statute authorizes the Court "to give an advisory opinion on any legal question" requested by a duly authorized body.

III. Experts on Missions under the General Convention

23. I now turn to a point of substance which is of particular interest and importance for the United Nations, namely, the concept of "experts on missions". This concept relates to Article VI of the General Convention, and in particular to Section 22 thereof, which deals with a class of persons called "experts on missions for the United Nations". That is one of three categories of persons related to the United Nations, as well as to other international organizations whose status is provided for specifically in the General Convention, and in the annexes of the companion Specialized Agencies Convention that were formulated by several of the agencies. The other two categories are "representatives of Member States" and "officials of the Organization".

24. In United Nations practice, the terms "experts on missions" comprises persons who, being neither representatives of States nor officials of the Organization, perform specific tasks for the Organization or one of its organs. Such persons may have a direct contractual relationship with the Organization, such as consultants employed on Special Service Agreements; alternatively, they might have an indirect relationship, such as military observers or police monitors whose relationship is defined not by a contract with the Organization, but by an agreement with their Governments, as well as in so-called status of forces agreements, such as the one governing the presence of UNTAG in Namibia. In either case, the particular status is spelled out in a special status agreement or in agreements with the Governments concerned. But in addition, many experts, like Mr. Mazilu, merely have a task assigned to them by competent organs which they have undertaken to carry out. These experts are not specifically identified as such through contracts or Special Service Agreements, but it is their function or assignment that confers their status upon them. They may receive their assignments from the Secretary-General or any other principal or subsidiary organ. Some of these assignments consist of membership in a par-

ticular body, such as the International Law Commission, to which they are elected or appointed, while other tasks are being assigned and accepted on an *ad hoc* basis. Some experts work individually, while others do so collectively in a standing commission or in a special task force. Some tasks are highly political, such as that of a Special Representative of the Secretary-General to deal with a particular international dispute, while others are purely technical, such as making a survey or searching literature. The particular task may be of great importance or it may be entirely routine. Frequently, these tasks involve travel, and some are indeed carried out entirely away from the expert's own country; others, however, perform their tasks largely or completely in their home countries. But, in any event, their tasks must be carried out on an *ad personam* basis, that is, the expert must, in respect of the particular task or assignment or mission, be responsible solely to the Organization and not be subject to national controls in the execution of his task.

25. It is neither correct nor relevant to distinguish between "rapporteurs", "officials" and "experts on missions" on the sole basis of the "permanent" or "occasional" nature of their assignments, as the Government of Romania attempts to do in its written statement. Whether the task assigned *ad personam* by the United Nations is long- or short-term, continuous or intermittent, important or unimportant, the person who performs it is an "expert" within the meaning of the Convention, whose "mission" is precisely co-extensive with his assignment.

26. It should again be pointed out that the "mission" of an expert does not necessarily include, and certainly is not defined by travel. While travel in connection with an assignment is always part of the mission — this being explicitly specified in Section 22 of the General Convention — the mission is not restricted to such travel or to a stay abroad, but rather consists of carrying out the assigned task, wherever this is done.

27. The United Nations has been entrusted with many important tasks which it has a duty to carry out in the interest of the international community as such. In order to enable the Organization to carry out its mandate, it must be given the necessary tools. One of these tools, born out of sheer necessity, out of sheer functional necessity, is the "expert on mission" who carries out activities for the Organization, which for substantive, administrative or financial reasons cannot be assigned to United Nations officials. It is for the Organization to determine on which occasions experts on missions are to be employed in order to carry out a given task, as well as to choose those experts. The limit of the discretion in this respect is the relevant mandate which has to be executed, the allocated budgetary means, as well as the general obligation encumbent on the Organization to carry out its tasks effectively, efficiently and in good faith. If a State does not agree with the use of experts on missions for a given purpose or if a State objects to a particular expert chosen, then that State can always turn to a responsible organ of the Organization. But the fact remains that the category of "experts on missions" is an essential and necessary tool which must be used as the Organization, through its competent organs, sees fit.

28. Experts on missions, in order to comply with the functional needs of the Organization, must be granted the appropriate privileges and immunities so that they can carry out their tasks for the Organization to the best of their abilities, free from national interference.

IV. Privileges and Immunities of Experts on Missions

29. And this now brings me to the next point on which I wish to make remarks complementing the written statement, and that is the nature of those

privileges and immunities of the experts on missions. The rights to which these experts are entitled in terms of the General Convention and certain annexes to the Specialized Agencies Convention are to be differentiated from those that apply to representatives of States or to officials. The former enjoy diplomatic privileges and immunities while the latter — except for the most senior ranks — enjoy only functional rights. But the scope and content of these, however, necessarily reflect the fact that these officials may be spending many years of their lives and often their entire careers in international service; thus, their privileges and immunities, though basically functional, must to some extent also apply to their persons and even to that of their families.

30. By contrast, the scope and content of the privileges and immunities of experts on missions are more strictly functional — even task-oriented. That is, their rights are not related to their need to maintain a certain international personal status, for the only purpose of granting such rights is to enable them to carry out a particular assignment, without national interference that might inhibit either their ability to perform that task or mission, or their freedom to do so to the best of their abilities and conscience.

31. I would like to add that States are protected by the obligation of the Organization to act in good faith in choosing and in assigning tasks to experts, by the ability of Governments to question contentious assignments in the competent organs of the Organization and, in extreme conditions, by requesting a waiver under Section 23 of the General Convention.

32. From a technical point of view, it is important to note that because of the more strictly task-related privileges and immunities of experts on missions, and also because of the usually temporary nature of their assignments, the conditions under which they become entitled to such privileges and immunities are different from those of representatives of States or international officials. Representatives of States generally require some sort of accreditation, which both defines their authority to act in or vis-à-vis an international organization, as well as the status under which they enjoy rights in the host country concerned. Officials are listed and annually reported to all members of the international organization that employs them.

33. In respect of experts on missions, however, none of these formalities are practical or generally necessary. As the parties to the General Convention have, by Article VI of that instrument, only undertaken not to interfere with these persons in carrying out the tasks assigned to them by the United Nations, it is not necessary that these States have an advance or current list of experts within their territory, nor would it be feasible to provide them with such data. For all practical purposes, it should suffice if an international expert, should he be threatened with a particular national interference in the execution of a task entrusted to him by the Organization, merely points out that fact to the national authorities concerned, and if necessary obtains confirmation from the Organization. Once the national authorities are aware of the international nature of a particular activity, they generally have no difficulty in according the necessary privileges and immunities to enable that activity to be carried out without interference.

34. Only in relation to travel is it sometimes useful if the United Nations-related purpose of a particular journey is documented by the Organization issuing a Certificate of Travel as foreseen under Section 26 of the General Convention.

35. Evidently, different experts need different privileges and immunities to carry out their respective missions. For some, these missions involve considerable danger, while for the most they are of a routine nature. Article VI of

the General Convention is formulated flexibly enough to cover all types of missions, because the basic rule is that each expert receives just what he needs to carry out his tasks — no more and no less.

V. Status of Experts Is Not Related to Nationality

36. The Romanian Government asserts, particularly in its Aide-Mémoire addressed to the United Nations on 6 January 1989, that an expert on mission cannot enjoy privileges and immunities in the country of which he is a national or a permanent resident, but solely in the country in which he is on mission and during such a mission. I will therefore briefly address this point.

37. Article VI of the General Convention does not differentiate in any way between the privileges and immunities enjoyed by an expert on mission in the country of his nationality, in the country of his permanent residence or in any other country. Article V, which relates to officials of the Organization, does not make any distinction either. In this, both Articles differ from Article IV, relating to the representatives of States, in that Article IV contains a clear provision excluding the enjoyment by a national representative of rights vis-à-vis the country that he represents or of which he is a citizen. Thus, when the drafters of the Convention considered it appropriate to exclude rights for citizens, they very clearly did so. When they did not consider such an exception appropriate, as in respect of officials or experts on missions, then they formulated no such exclusion. Certainly, in respect of officials no one doubts that they can and do enjoy rights vis-à-vis their own countries and there is no reason to hold otherwise in respect of experts on missions.

38. As pointed out in the written statement submitted on behalf of the Secretary-General, in the past a few countries have made certain reservations designed to diminish to some extent the rights enjoyed by experts of their nationality in respect of their own Governments, in such matters as taxes and national service. Romania made no such reservation, and therefore cannot claim such exception. On the other hand, as also recalled in the written statement, a few other countries that wished to formulate extensive exclusions in respect of experts of their nationality, were advised by the Secretary-General — in his capacity both as depositary of the Convention and guardian of its provisions — that such wide exclusions would not be compatible with the purpose of the Convention, and therefore could not be accepted.

39. In its written statement, Romania has also put forward that:

> "In the country of which he is a citizen, in the country where he has his permanent residence, or in other countries where he may be for reasons unconnected with the mission in question, the expert is only accorded privileges and immunities in relation to the content of the activities in which he engages during his mission (including his spoken and written communications)."

This argument finds no basis in the General Convention or in any other similar instrument. It implies a limitation on the functions an expert can perform in his own country and is again based on the incorrect assumption that an expert's mission consists principally of travel. In our view, the only question with respect to an expert's rights, in his country or elsewhere, should be whether he is carrying out in that country any aspect of his mission. For if he is, then Section 22 of the General Convention applies.

40. Evidently, where a particular assignment is to be carried out depends largely on objective factors, that is, on the requirements of that assignment.

Some may involve travel in one or more countries foreign to the expert; some may require work in his own country; and some might be performed anywhere and would therefore normally be performed where the expert happens to be located — which will usually be his own country. But wherever and whenever the expert is actually working or attempting to work on his assignment, in his country or abroad, he is entitled to such of the privileges and immunities specified in Section 22 of the General Convention "as are necessary for the independent exercise of [his] functions".

41. It is equally evident that a country cannot, by preventing an expert from performing his international assignment, thereby avoid granting him the applicable rights specified in Section 22 of the Convention, on the ground that he is only entitled to such rights while carrying out that assignment. To hold otherwise would be to reward non-compliance with this international obligation, and indeed deprive it of all meaning.

VI. Status of Mr. Mazilu

42. Finally, I will now project the conclusions reached in the remarks I have made to the particular situation of Mr. Mazilu, in respect of whom the Economic and Social Council has posed its question.

43. Mr. Mazilu initially became an expert on mission for the United Nations by virtue of his membership in the Sub-Commission — a United Nations subsidiary organ to which he was elected in his personal capacity. The Sub-Commission is a body similar to many others whose members have long been characterized as experts on missions, and indeed Romania does not dispute that status as long as he retained that membership.

44. When his membership on the Sub-Commission ceased by the expiration of his term of office, his task as Special Rapporteur for Human Rights and Youth still continued. Romania contends that at that stage his status as an expert on mission ceased, perhaps because it fell below a certain undefined threshold of significance as an assignment for the United Nations. But the General Convention does not speak of such a threshold and indeed it would be difficult to see how one could be defined or justified. Therefore, Mr. Mazilu continued as an expert, but his sole mission for the United Nations was now the completion of the report. Whether work on that report was more onerous or more time-consuming than his other work as a member of the Sub-Commission is not known and is not relevant. The point is that whenever he was engaged in such work, or related travel or correspondence, he was entitled to be protected from governmental interference with such activities.

45. Romania also argues that Mr. Mazilu was not entitled to be considered as an expert on mission merely by virtue of his task to prepare a report for the Sub-Commission, because he did not start on such work until after his membership in that body ceased, and that even thereafter he did not work on it, at least for some time, for reasons of health or otherwise.

46. Mr. Mazilu's ill health, which allegedly led to his retirement from all his governmental posts, has been advanced as a justification for possible interference with the performance of his assignment for the United Nations. However, the fact that his health may not have permitted him to continue to occupy his governmental posts was not determinative of whether he could carry out his separate United Nations assignment. While the Romanian written statement expresses the view that the work of a rapporteur is strenuous, it is for the United Nations to set any standards of health that it wishes for its experts, and as to some categories it has actually done so. But it is not obliged, nor does it,

as a matter of practice, make either staff appointments or experts assignments dependent on governmental medical clearances. Whether Mr. Mazilu was thus healthy enough to carry our his assignment was a matter to be determined on the one hand by himself, and on the other by the United Nations.

47. Evidently, if an expert does not carry out his mission, for any reason but governmental interference, then he is not entitled to the protection afforded by Section 22 of the General Convention, for that protection relates only to the performance of the mission, that is the carrying out of an assigned task. But if the reason for the non-performance is governmental interference, then that Government cannot claim that the interference was justified by the fact that the lack of performance caused thereby meant that the person in question was never entitled to protection as an expert on mission.

48. While it is not entirely clear when Mr. Mazilu started to work or to try to work on his report, and why there may have been any delay, that is all not relevant to the question addressed to the Court. What is clear is that the Sub-Commission, which might have cancelled the assignment on the ground of Mr. Mazilu's apparent initial inactivity, did not choose to do so. Instead, it explicitly extended the assignment year after year, and thus Mr. Mazilu remained and still remains a Special Rapporteur.

49. What is equally clear is that Mr. Mazilu himself did not give up his assignment. Whenever he was able to communicate with the Centre for Human Rights, or with officers or members of the Sub-Commission, he confirmed his desire to proceed with his work and asked for assistance and protection to enable him to do so. So, if there was lack of performance on his part during any part of this period, it was apparently not due to any wilful neglect on his part.

50. Since thus the Sub-Commission explicitly wished and still wishes Mr. Mazilu to continue as its Special Rapporteur on Human Rights and Youth, and since there is no doubt he is willing to carry out that assignment for the United Nations, it follows that he continues in the status of an expert on mission, within the meaning of Article VI, Section 22, of the General Convention. While working on his report, he is entitled to freedom from inhibition on the independent exercise of this function from any Government, including his own.

51. Thus, the considerations which I have just advanced to complement the written statement, confirm the conclusions reached therein with respect to the applicability of Article VI, Section 22, of the General Convention to Mr. Mazilu as a Special Rapporteur of the Sub-Commission.

Conclusion

52. I do hope, Mr. President, that these remarks will assist the Court in rendering the advisory opinion requested by the Economic and Social Council.

The Court adjourned from 11.05 to 11.40 a.m.

ORAL STATEMENT BY MR. SOFAER

LEGAL ADVISER, UNITED STATES DEPARTMENT OF STATE

Mr. SOFAER:

INTRODUCTION

Mr. President and Members of the Court, it is an honour to represent the United States in this proceeding, which involves issues of substantial concern to the international community.

The United Nations Economic and Social Council has for the first time exercised its authority to request an advisory opinion from this Court. ECOSOC has not taken this historic step lightly, but rather in response to a serious situation that has developed with respect to its ability and the ability of its subsidiary organs to carry out their important work.

The unfortunate circumstances underlying ECOSOC's request to this Court have been meticulously described by the United Nations Legal Adviser. The United States has submitted a written statement and additional written comments. My purpose today will be to present the essentials of our position and to stress the importance of deciding this case without impinging upon the legitimate concerns of Member States.

JURISDICTION

The precise question before this Court is a request that it renders its advisory opinion:

> "on the legal question of the applicability of Article VI, Section 22, of the Convention on the Privileges and Immunities of the United Nations in the case of Dumitru Mazilu as Special Rapporteur of the Sub-Commission"

of ECOSOC. In general, this question poses no serious doubt. Romania, in its written submission concedes that it is a party to the General Convention (p. 201, *supra*), and that it "does not deny the applicability of the provisions of the 1946 Convention" (p. 204, *supra*), to the extent that special rapporteurs such as Mr. Mazilu though not "on the same footing as the experts who carry out missions for the United Nations" (p. 203, *supra*), are entitled under some circumstances to functional immunity *(ibid.)*. Romania claims, however, that this Court has no jurisdiction whatever to advise on this question or on the scope of the privileges and immunities enjoyed by Mr. Mazilu because of the reservation it entered under Section 30 of the General Convention concerning the settlement of disputes. The United States believes that Romania's position on jurisdiction is untenable, and that this Court should exercise its authority to advise the United Nations on the Convention's applicability in the case of Mr. Mazilu.

Romania argues in its submission that ECOSOC's request for an advisory opinion must be treated as having been made under Section 30 of the General Convention, and that its reservation to that section strips the Court of jurisdiction to render such an opinion. It contends that "Romania has expressly declared that it did not agree that any kind of opinion should be asked of the Court concerning the present case" (p. 202, *supra*), and that this reservation to Section 30 precludes jurisdiction on any other basis as well.

Romania could not achieve this result, even if it in fact had attempted to do so with the clarity necessary for such an objective. ECOSOC has requested this advisory opinion, not under Section 30 of the General Convention, but as an exercise of its authority under Article 96 of the United Nations Charter and General Assembly resolution 89 (I), which authorized ECOSOC to seek advisory opinions on legal questions falling within the scope of its activities. The issue submitted by ECOSOC concerns the privileges and immunities to which a special rapporteur of the United Nations Sub-Commission on Prevention of Discrimination and Protection of Minorities is entitled. The Sub-Commission is a subsidiary organ of ECOSOC. Accordingly, ECOSOC has requested an advisory opinion on a legal question falling within the scope of its activities and has therefore satisfied the requirements of Article 96 and resolution 89 (I).

The jurisprudence of this Court establishes that a reservation to a dispute settlement provision in a multilateral convention, however clearly expressed, cannot deprive the United Nations or any authorized United Nations body of its independent authority to seek, and this Court of its discretion to provide, an advisory opinion concerning appropriate legal questions.

In *Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide*, this Court was presented with a request by the General Assembly for an advisory opinion regarding the effect of reservations to the Genocide Convention and objections to those reservations. Article IX of the Genocide Convention, like Section 30 of the General Convention, provides that disputes as to the interpretation and application of the Convention shall be submitted to the Court at the request of any of the parties. States opposing the requested opinion argued that Article IX deprived the Court of any power to give an advisory opinion. The Court held, however, that the existence of a dispute resolution procedure, such as that provided in Article IX of the Genocide Convention, does not deprive the Court of jurisdiction to render an advisory opinion concerning that treaty pursuant to the general authority provided under Article 96 of the Charter (*I.C.J. Reports 1951*, p. 15).

Some years later the Court reaffirmed this principle in *Judgments of the Administrative Tribunal of the ILO upon Complaints Made against Unesco*. While the Court in that case upheld the authority of Unesco to request an advisory opinion under Article XII of the Statute of the Administrative Tribunal, which permits an international organization to challenge a decision of the Tribunal on jurisdiction and procedural grounds, it expressly confirmed that Unesco also had the general power to request advisory opinions on legal questions arising within the scope of its activities under Article 96 of the agreement between Unesco and the United Nations — though it had chosen not to predicate its request on that general power (*I.C.J. Reports 1956*, p. 77).

As the Court's decisions in these cases suggest, dispute settlement provisions in multilateral conventions are not to be construed as displacing, but rather as supplementing, the general authority of United Nations bodies to seek legal advice from this Court. Hence, no reservation to such provisions can be effective to deprive those general authorities of their intended force. Any other rule would enable a State to reduce the intended scope of the Court's advisory jurisdiction under Article 96 by refusing to agree to a dispute settlement provision under particular multilateral conventions.

The fact is, moreover, that Romania's reservation to Section 30 is insufficiently clear even to permit the contention that it successfully displaced ECOSOC's more general authority. The reservation's language, read in conjunction with Section 30, demonstrates that it does not even purport to bar the Court from rendering an advisory opinion. Romania's reservation contains two

sentences. The first sentence addresses that part of Section 30 that provides for resort to the Court for decisions in regard to differences between parties over the interpretation and application of the Convention; Romania refused to accept that compulsory jurisdiction without its express consent. The second sentence of the reservation addresses that part of Section 30 providing that advisory opinions will be accepted by the parties as "decisive". It is this consequence that Romania sought in its reservations to reject, and successfully, as the United Nations recognizes. The reservation, therefore, fails to strip the Court of jurisdiction to render advisory opinions, and concerns only the legal effect of such opinions. Any doubt as to this construction should be resolved in a manner that avoids the implication that Romania in fact intended a result — a reservation against any advisory jurisdiction — that would be inconsistent with the Charter's design.

Romania's final argument is that, even if the Court has jurisdiction, the problem of applying the General Convention "does not even arise in this instance" (p. 203, *supra*). Romania's position in this regard is that it does not dispute the application of the Convention, but that its application in this case must lead the Court to conclude that Mr. Mazilu has no immunity because he has not left Romania; or he has been determined in accordance with Romanian law to be too sick to travel or perform the task assigned him; or his job as rapporteur has expired.

In fact, however, Romania concedes the Convention's applicability to Mr. Mazilu only, in its words, "as described above" (p. 204, *supra*). Romania's description of the Convention's application to Mr. Mazilu is at odds with that of the United Nations and with the high value that must be placed on the independence of rapporteurs and other experts. The limitations proposed by Romania cannot be applied consistently with the preservation of this value because: the privileges and immunities accorded to Mr. Mazilu, though limited to the needs of his function, cannot arbitrarily be denied within the territory of any State, even that of his own nationality; because Romania cannot be recognized to possess absolute, unverifiable discretion in determining his capacity to perform, particularly in the light of substantial and credible evidence to the contrary; and because the United Nations body that appointed Mr. Mazilu, not Romania, must decide when his job expires.

The United States recognizes, of course, that this Court has the discretion to refuse to issue an advisory opinion if the circumstances warranted such restraint. Nothing in the present case supports such abstention, however. The question posed is not hypothetical, but concerns a real and ongoing controversy between the United Nations and Romania, over a matter of fundamental importance to the United Nations system, and involving a human dimension that the Secretary-General was specifically requested by the Sub-Commission "to follow closely . . .". That Mr. Mazilu's report has recently been published in a preliminary form in no respect reduces the propriety of judicial action. Publication of the report was followed by Sub-Commission action inviting Mr. Mazilu to attend its 1990 session to present an updated report at that time. The controversy over Mr. Mazilu's status therefore continues.

But even if Mr. Mazilu had no further function to perform, the legal issues posed by his case would nonetheless be real and not purely hypothetical, and their determination would be within the discretion of the Court. Unlike the United States system, and others which require a current "case or controversy" to justify a judicial determination, the United Nations system explicitly contemplates advisory opinions which provide non-binding guidance to the United Nations and its membership.

Merits

Finally, I would like to make only one comment addressing the merits of the question presented to the Court. The United Nations has avoided any suggestion that the scope of Mr. Mazilu's privileges and immunities extend beyond the needs of his function (I refer specifically to paragraph 63 of the excellent brief of the United Nations, p. 188, *supra*), and nothing in the record requires any restriction in this case on the legitimate scope of national control over United Nations experts by their home States. This case does not involve, for example, any assertion by the Government of Romania that its national, though a United Nations expert, has been convicted of a crime, or is serving a prison sentence, or must for some other legitimate reason be detained against his will. The United States would be greatly concerned with any claim that an individual could use his immunity as a United Nations expert to evade the legitimate domestic laws of his State, fairly applied. The United Nations in this respect has pointed out its obligation under the Convention in such circumstances to waive immunity.

Here, the only reason given to justify Romania's refusal to permit its citizen from carrying out his offical United Nations mission is that he is too sick to perform that mission, while the record reflects that the individual concerned claims he is well enough to perform the mission. At a minimum, this Court should advise ECOSOC that a State is obliged, in these circumstances, to accept an independent evaluation of the physical fitness of its citizen. Though not binding, the United States would hope that Romania would be able to end this unfortunate dispute by accepting the Court's opinion.

Conclusion

Mr. President, Members of the Court, for the foregoing reasons and those set out in our written submissions, the United States supports this Court's assumption of jurisdiction in this matter, and its determination of the question presented.

QUESTIONS DE M. GUILLAUME ET DU PRÉSIDENT

Question de M. Guillaume

M. GUILLAUME: J'aimerais poser une question au représentant du Secrétaire général. Cette question est la suivante: Selon le Secrétaire général existe-il entre l'Organisation des Nations Unies et la Roumanie un différend au sens de la section 30 de la convention générale?[1]

Questions du Président

Le PRÉSIDENT: Je dois poser trois questions comme membre de la Cour.

Première question: La question de l'applicabilité à M. Dumitru Mazilu de l'article VI, section 22, de la convention sur les privilèges et immunités des Nations Unies s'est-elle déjà posée, à la connaissance du Secrétaire général, lorsque M. Mazilu était encore membre de la Sous-Commission de la lutte contre les mesures discriminatoires et de la protection des minorités?[2]

Deuxième question: Le représentant du Secrétaire général pourrait-il indiquer le cadre juridique précis dans lequel s'inscrit la prorogation alléguée, au-delà du 31 décembre 1987, du mandat de M. Mazilu en sa qualité de rapporteur spécial de la Sous-Commission?[3]

Troisième question: Le représentant du Secrétaire général pourrait-il préciser quelle est, de l'avis du Secrétaire général, l'incidence du «statut juridique de la convention vis-à-vis de l'Organisation», comme vous le dites dans votre exposé écrit (par. 51-53), sur la réponse à donner à la question formulée dans la résolution 1989/75 du Conseil économique et social?[4]

Les trois questions sont posées à vous, M. Fleischhauer, comme représentant du Secrétaire général. Si vous voulez répondre par écrit, vous avez l'opportunité de le faire. Si vous voulez répondre oralement, vous pourrez le faire demain matin lors d'une audience qui sera tenue à cet effet à dix heures. Nous sommes à votre disposition.

M. FLEISCHHAUER: Monsieur le Président, je voudrais répondre à ces questions oralement, si c'est possible demain matin.

Le PRÉSIDENT: Nous tiendrons donc une audience demain matin à 10 heures pour écouter les réponses de M. Fleischhauer à la question posée par M. Guillaume et aux trois questions posées par moi-même, comme membre de la Cour.

L'audience est levée à 12 h 10

[1] Voir ci-après p. 249-250.
[2] *Ibid.*, p. 250-251.
[3] *Ibid.*, p. 251.
[4] *Ibid.*, p. 251-252.

SECOND PUBLIC SITTING (5 X 89, 10 a.m.)

Present: [See sitting of 4 X 89.]

REPLY BY MR. FLEISCHHAUER TO QUESTIONS[1] PUT BY JUDGE GUILLAUME AND BY THE PRESIDENT

Mr. FLEISCHHAUER: Mr. President I will answer the questions in the order in which they have been put to me.

Question by Judge Guillaume

The question asked by Judge Guillaume was:

> "Selon le Secrétaire général existe-il entre l'Organisation des Nations Unies et la Roumanie un différend au sens de la section 30 de la convention générale?"

In responding to this question I would first like to say that it of course appears clearly, both from the Secretary-General's written statement and from the oral one that I had the honour to present yesterday, that — in the conventional sense of the word — there are a number of "differences" between the legal position of the United Nations and that of the Romanian Government in respect of the applicability of Section 22 of the General Convention to Mr. Mazilu. We consider that these differences include — and I realize that as to this point the Romanian written statement expresses a different view — the very issue as to which the Economic and Social Council addressed its question to the Court, that is whether Mr. Mazilu, in his capacity as a Special Rapporteur of the Sub-Commission on Prevention of Discrimination and Protection of Minorities, was an "expert on mission for the United Nations" within the meaning of Section 22 of the General Convention. A further question, as to which Romania itself admits that there is a difference, concerns Mr. Mazilu's ability to carry out his assignment from the Sub-Commission.

But, even though there are indeed differences or divergences between the United Nations and the Romanian Government as to several aspects of Mr. Mazilu's status, this does not mean that these "differences" are ones within the meaning of Section 30 of the General Convention and in this connection a number of points are to be noted:

In the first place, even though the Economic and Social Council did indeed note that a "difference" had arisen between the Organization and the Government, it made that observation without any reference to Section 30 of the General Convention — even though in the next following paragraph of its resolution 1989/75 it explicitly cited another Section of that instrument. While its use of that term, the term "difference", may therefore not be entirely clear, it should be noted that the Council is not a juridical body, nor is it composed of legal experts.

However, it is suggestive of the Council's intention in adopting the resolution to note that, having referred to a "difference", it then did not attempt to have that difference as a whole resolved by the question it addressed to the Court.

[1] See p. 248, *supra*.

Rather, as already commented on in our written and oral statements, the Council merely addressed a preliminary legal question to the Court, which appears designed to clarify at most the general status of Mr. Mazilu in respect of the Convention, without resolving the entire issue that evidently separates the United Nations and the Government.

In the second place it should be noted that at no time has the Secretary-General invoked Section 30 of the General Convention or suggested, vis-à-vis the Romanian Government, that a difference within the meaning of that Section had arisen. Though the Convention does not so specify, it would appear that such an invocation by the Secretary-General, rather than a mere resolution of another principal organ, is an important factor in determining whether a difference or dispute can formally be said to exist between the Organization and a Member State party to the Convention. Members of the Court will no doubt recall that just last year, in its Advisory Opinion on the *Applicability of the Obligation to Arbitrate under Section 21 of the United Nations Headquarters Agreement*, it was the Secretary-General's conclusion, communicated formally to the United States Government, that a dispute had arisen in respect of that Agreement, that constituted an important factor in the Court's determination that there was indeed such a dispute.

To summarize my response, it is the United Nations position that while differences have indeed arisen between itself and the Romanian Government in respect of the applicability of the General Convention to Mr. Mazilu, under the circumstances as described, such differences are not ones within the meaning of Section 30 of the Convention.

I now come to the first question posed to me by you yourself, Mr. President.

First question by President Ruda

The first question asked by you was:

> "La question de l'applicabilité à M. Dumitru Mazilu de l'article VI, section 22, de la convention sur les privilèges et immunités des Nations Unies s'est-elle déjà posée, à la connaissance du Secrétaire général, lorsque M. Mazilu était encore membre de la Sous-Commission de la lutte contre les mesures discriminatoires et de la protection des minorités?"

In response to this question I would first like to say that the factual elements that eventually led to the question concerning the applicability of Section 22 of the General Convention to Mr. Mazilu started to emerge in the thirty-ninth session of the Sub-Commission in August 1987 when Mr. Mazilu, who at its previous session in 1985 had been assigned the task of preparing a report on human rights and youth and to present it at the 1987 session, failed to appear thereat, even though he was then still a member as well as a Special Rapporteur. However, at that session it was assumed, on the basis of the information then available, that Mr. Mazilu was too ill to attend, and no legal questions were raised at that time about his absence. Instead, his mandate as a Special Rapporteur was routinely extended until the following year, even though the Sub-Commission knew that in the interim his term as member would expire.

By the time the Sub-Commission next met, at its fortieth session in August 1988, Mr. Mazilu was no longer a member of the Sub-Commission, his term having expired on 31 December 1987. Because he was not present at that session either, and it then appeared that his absence might not be entirely due to medical reasons — in particular because the secretariat reported on the difficulties it had had in communicating with him — the question of his legal status vis-à-vis the

Organization was first raised. As reported in the Secretary-General's written statement, it was at that time that it was first recognized that Mr. Mazilu was to be considered as an "expert on mission for the United Nations" within the meaning of Section 22 of the General Convention, and it was immediately thereafter that this position was communicated to the Romanian Government.

Thus, it would appear that Mr. Mazilu's status under the General Convention was first raised after he ceased to be a member of the Sub-Commission.

Second question by President Ruda

The second question put to me by the President reads as follows:

> "Le représentant du Secrétaire général pourrait-il indiquer le cadre juridique précis dans lequel s'inscrit la prorogation alléguée, au-delà du 31 décembre 1987, du mandat de M. Mazilu en sa qualité de rapporteur spécial de la Sous-Commission?"

As pointed out in the written statement submitted on behalf of the Secretary-General, the Sub-Commission has a long-established practice of appointing rapporteurs and special rapporteurs normally from among its members but occasionally also non-members, in order to assist it in performing its tasks and I refer in particular to paragraph 72 of the written statement. This practice has been recognized by its parent bodies — the Commission on Human Rights and the Economic and Social Council. This competence to appoint rapporteurs and special rapporteurs necessarily carries with it the competence to extend, reassign and terminate their assignments.

As also mentioned in our written statement, the Sub-Commission, acting within its terms of reference, on 29 August 1985 appointed Mr. Mazilu, while he was still a member of the Sub-Commission, as its Special Rapporteur on Human Rights and Youth. This decision was then endorsed by the Commission on Human Rights by its resolution 1987/44 of 10 March 1987. When Mr. Mazilu's membership in the Sub-Commission ceased, that body explicitly indicated and decided at its thirty-ninth, fortieth and forty-first sessions in 1987, 1988 and 1989 respectively that it wished Mr. Mazilu to complete and then to update his report. The 1987 and 1988 decisions were again subsequently endorsed by the Commission and by the Economic and Social Council.

As also mentioned in my oral statement yesterday, whenever Mr. Mazilu was able to communicate with the Centre for Human Rights or with officers or members of the Sub-Commission, he confirmed his desire to continue with his work and asked for assistance to enable him to do so. There is thus no doubt of his willingness to carry out that assignment for the United Nations.

In the light of what I have said, it is therefore our view that since the organs which have the competence to appoint special rapporteurs asked Mr. Mazilu to continue to discharge the task assigned to him, irrespective of his membership in the Sub-Commission, and that since he apparently is willing to perform that task, his status as a Special Rapporteur of the Sub-Commission continues until he has completed the assignment or it is otherwise terminated.

Third question by President Ruda

The third question asked by you, Mr. President, reads as follows:

> "Le représentant du Secrétaire général pourrait-il préciser quelle est, de l'avis du Secrétaire général, l'incidence du «statut juridique de la convention vis-à-vis de l'Organisation», comme vous le dites dans votre exposé

écrit (par. 51-53), sur la réponse à donner à la question formulée dans la résolution 1989/75 du Conseil économique et social?"

In response, I would like to point to the fact that ECOSOC resolution 1989/75 speaks in both operative paragraphs of the applicability of the Convention on the Privileges and Immunities of the United Nations to Mr. Dumitru Mazilu as Special Rapporteur of the Sub-Commission on Prevention of Discrimination and Protection of Minorities. The applicability of the so-called General Convention is therefore at the centre of the question posed by the Council.

It seemed to us that there were two reasons that made it desirable to clarify, in the written statement presented on behalf of the Secretary-General, the legal status of the General Convention vis-à-vis the Organization.

First: Addressing the Court as the principal legal organ of the Organization on the legal issue submitted to it by ECOSOC, it seemed to us that for the sake of completeness, we should clarify the legal status of the Convention vis-à-vis the Organization. As it appears from the documents cited in paragraphs 51 through 53 of the written statement, that status can be variously interpreted. We therefore felt that we should make it clear that the Organization derives rights and obligations from the General Convention under whichever interpretation of that legal status one adopts.

Second: Although ECOSOC, the parent body of the Commission on Human Rights, and thus of its Sub-Commission, is authorized to ask for an advisory opinion on any legal question concerning their activities, it seemed to us that we should make it clear that the United Nations has a legal interest in the interpretation of the Convention. This is particularly so since, as was pointed out in both our written and oral statements, we are not proceeding under Section 30 of the Convention.

These, Mr. President, are the answers I wanted to give to the questions addressed to me.

CLÔTURE DE LA PROCÉDURE ORALE

Le PRÉSIDENT: Au nom de la Cour, je remercie M. Fleischhauer de ses réponses aux questions qui lui ont été posées à l'audience d'hier.

Ces réponses mettent fin à la procédure orale en la présente espèce. La Cour va maintenant commencer son délibéré.

L'audience est levée à 10 h 25

TROISIÈME AUDIENCE PUBLIQUE (15 XII 89, 10 h)

Présents: M. RUDA, *Président*; MM. ELIAS, ODA, AGO, SCHWEBEL, sir ROBERT JENNINGS, MM. BEDJAOUI, NI, EVENSEN, TARASSOV, GUILLAUME, SHAHABUDDEEN, PATHAK, *juges*; M. VALENCIA-OSPINA, *Greffier*.

LECTURE DE L'AVIS CONSULTATIF

Le PRÉSIDENT: La Cour se réunit aujourd'hui pour prononcer en audience publique, conformément à l'article 67 de son Statut, l'avis consultatif, afférent à l'*Applicabilité de la section 22 de l'article VI de la convention sur les privilèges et immunities des Nations Unies*, que le Conseil économique et social de l'Organisation des Nations Unies lui a demandé de donner aux termes de sa résolution 1989/75.

Le paragraphe 2 du dispositif de ladite résolution était ainsi libellé:

[Le Président lit le paragraphe 2 de la résolution 1989/75[1].]

M. Mbaye, Vice-Président, pour des raisons de santé, a été empêché de siéger en la présente affaire. M. Lachs, qui a pris part au délibéré et au scrutin final, a été empêche de siéger aujourd'hui pour un motif dûment justifié.

Les paragaphes 1 à 8 de l'avis rappellent les étapes de la procédure depuis que la Cour a été saisie de la demande. Selon l'usage, je ne donnerai pas lecture de ces paragraphes. J'entame donc maintenant la lecture du texte de l'avis, en commençant par le paragraphe 9, qui introduit l'exposé des faits.

[Le Président lit les paragraphes 9 à 61 de l'avis consultatif[2].]

Je prie maintenant le Greffier de bien vouloir lire le dispositif de l'avis en anglais.

[The Registrar reads paragraph 61 of the Opinion[3].]

MM. Oda, Evensen et Shahabuddeen joignent à l'avis consultatif les exposés de leur opinion individuelle.

Conformément à la pratique, le texte de l'avis consultatif est disponible dès aujourd'hui sous forme multicopiée; le texte imprimé sera disponible très prochainement.

L'audience est levée

Le Président,
(Signé) José María RUDA.

Le Greffier,
(Signé) Eduardo VALENCIA-OSPINA.

[1] Voir ci-dessus p. 5.
[2] *C.I.J. Recueil 1989*, p. 179-198.
[3] *I.C.J. Reports 1989*, p. 198.

CORRESPONDANCE

CORRESPONDENCE

1. THE LEGAL COUNSEL OF THE UNITED NATIONS TO THE REGISTRAR OF THE INTERNATIONAL COURT OF JUSTICE

(facsimile)

26 May 1989.

I should like to inform you that the Economic and Social Council at its sixteenth meeting held on 24 May 1989 adopted a resolution requesting an advisory opinion on a priority basis from the International Court of Justice on "the legal question of the applicability of Article VI, Section 22, of the Convention on the Privileges and Immunities of the United Nations of 13 February 1964 in the case of Mr. Dumitru Mazilu as Special Rapporteur of the Sub-Commission on the Prevention of Discrimination and Protection of Minorities". A copy of the Provisional text in E and F is attached (Annex I, A and B)[1]. The words "on a priority basis" in operative paragraph 2 were proposed by the United States and were adopted by a recorded vote of 17 in favour and 9 against, with 22 abstentions (Annex II)[2]. The resolution as a whole as amended was adopted by a recorded vote of 24 in favour and 8 against, with 19 abstentions (Annex III)[3].

Formal letter of submission will follow as soon as final text of the resolution becomes available.

(Signed) Carl-August FLEISCHHAUER.

2. THE SECRETARY-GENERAL OF THE UNITED NATIONS TO THE PRESIDENT OF THE INTERNATIONAL COURT OF JUSTICE

[See p. 2, supra.*]*

3. THE REGISTRAR TO THE SECRETARY-GENERAL OF THE UNITED NATIONS

14 June 1989.

I have the honour to acknowledge receipt of Your Excellency's letter of 1 June 1989, received in the Registry on 13 June 1989, informing me of the adoption, on 24 May 1989, by the United Nations Economic and Social Council of resolution 1989/75, requesting, on a priority basis, an advisory opinion from the Court on the legal question of the applicability of Article VI, Section 22, of the Convention on the Privileges and Immunities of the United Nations in the case of Mr. Dumitru Mazilu as Special Rapporteur of the Sub-Commission on Prevention of Discrimination and Protection of Minorities. I am proceeding to effect the notifications required by Article 66, paragraph 1, of the Statute of the Court.

Paragraph 2 of Article 66 of the Statute provides that the Registrar shall, by means of a special and direct communication, notify any State entitled to appear

[1] Not reproduced. For the final text, see pp. 4-5, *supra*.
[2] See pp. 6-7, *supra*.
[3] *Ibid.*

before the Court or international organization considered by the Court, or, should it not be sitting, by the President, as likely to be able to furnish information on the question, that the Court will be prepared to receive within a time-limit to be fixed by the President, written statements, or to hear, at a public sitting to be held for the purpose, oral statements relating to the question.

Pursuant to this provision, I have the honour to inform Your Excellency that, in the present case, the United Nations and the States which are parties to the Convention on the Privileges and Immunities of the United Nations are considered by the President as likely to be able to furnish information on the question and that he has fixed 31 July 1989 as the time-limit for the submission of written statements and 31 August 1989 as the time-limit for written comments on those statements, pursuant to Article 66, paragraphs 2 and 4, of the Statute of the Court. The rest of the procedure has been reserved for further decision. A copy of the Order[1] made by the President in this respect will be forwarded shortly.

I accordingly request Your Excellency to be so good as to regard this letter as the special and direct communication provided for in Article 66, paragraph 2, of the Statute.

If the United Nations intends to present a written statement in this case, I would appreciate it if I might be so informed as soon as possible.

(Signed) Eduardo VALENCIA-OSPINA.

4. LE GREFFIER AU MINISTRE DES AFFAIRES ÉTRANGÈRES D'AFGHANISTAN[2]

14 juin 1989.

Par lettre du 1er juin 1989 reçue au Greffe le 13 juin 1989, le Secrétaire général de l'Organisation des Nations Unies m'a fait savoir que le Conseil économique et social des Nations Unies avait adopté, le 24 mai 1989, la résolution 1989/75 demandant à titre prioritaire à la Cour un avis consultatif sur la question juridique de l'applicabilité de la section 22 de l'article VI de la convention sur les privilèges et immunités des Nations Unies au cas de M. Dumitru Mazilu en sa qualité de rapporteur spécial de la Sous-Commission de la lutte contre les mesures discriminatoires et de la protection des minorités. En exécution du paragraphe 1 de l'article 66 du Statut de la Cour, j'ai l'honneur de vous informer de cette demande d'avis consultatif par la présente lettre. Un exemplaire de la requête pour avis consultatif, imprimé par les soins du Greffe, vous sera envoyé dès que possible.

Le paragraphe 2 de l'article 66 du Statut dispose qu'à tout Etat admis à ester devant la Cour et à toute organisation internationale jugés, par la Cour ou par son Président si elle ne siège pas, susceptibles de fournir des renseignements sur la question, le Greffier fait connaître, par communication spéciale et directe, que la Cour est disposée à recevoir des exposés écrits dans un délai à fixer par le Président, ou à entendre des exposés oraux au cours d'une audience publique tenue à cet effet.

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[1] *I.C.J. Reports 1989*, p. 9.

[2] Une communication analogue a été adressée aux autres Etats parties à la convention sur les privilèges et immunités des Nations Unies.

Par application de cette disposition, j'ai l'honneur de vous faire connaître qu'en l'espèce l'Organisation des Nations Unies et les Etats parties à la convention sur les privilèges et immunités des Nations Unies sont considérés par le Président comme susceptibles de fournir des renseignements sur la question et que le Président a fixé au 31 juillet 1989 la date d'expiration du délai pour la présentation d'exposés écrits et au 31 août 1989 la date d'expiration du délai pour la présentation d'observations écrites sur ces exposés, conformément aux paragraphes 2 et 4 de l'article 66 du Statut de la Cour. La suite de la procédure est réservée. Un exemplaire de l'ordonnance prise par le Président à ce sujet vous sera aussi envoyé sous peu.

En conséquence, je vous prie de bien vouloir considérer la présente lettre comme la communication spéciale et directe prévue au paragraphe 2 de l'article 66 du Statut.

Dans le cas où votre gouvernement se proposerait de présenter un exposé écrit en l'espèce, je souhaiterais en être informé aussitôt que possible. J'ajoute que cet exposé devrait être rédigé dans l'une des langues officielles de la Cour, le français ou l'anglais (paragraphe 1 de l'article 39 du Statut).

5. THE LEGAL COUNSEL OF THE UNITED NATIONS TO THE REGISTRAR

26 June 1989.

I have the honour to acknowledge receipt of your letter of 14 June 1989, addressed to the Secretary-General, informing him of the Court's Order of 14 June 1989 in the matter of the advisory opinion concerning the *Applicability of Article VI, Section 22, of the Convention on the Privileges and Immunities of the United Nations*.

I have the honour to transmit herewith a letter from the Secretary-General addressed to the President of the International Court of Justice authorizing me to present written and oral statements on his behalf in the matter of the advisory opinion. It is the United Nations intention to submit a written statement in this case.

Copies of this letter and of the above-mentioned letter of the Secretary-General have been transmitted to you by facsimile.

6. THE SECRETARY-GENERAL OF THE UNITED NATIONS TO THE PRESIDENT

26 June 1989.

I have the honour to inform you that I have designated Mr. Carl-August Fleischhauer, Under-Secretary-General, the Legal Counsel, as the representative of the Secretary-General in the proceedings of the Court concerning the request by the Economic and Social Council for an advisory opinion concerning the *Applicability of Article VI, Section 22, of the Convention on the Privileges and Immunities of the United Nations*.

Mr. Fleischhauer is authorized to present written and oral statements on behalf of the Secretary-General in the matter before the Court.

(Signed) Javier PÉREZ DE CUÉLLAR.

7. LE GREFFIER AU MINISTRE DES AFFAIRES ÉTRANGÈRES D'AFGHANISTAN[1]

30 juin 1989.

Le Greffier de la Cour internationale de Justice a l'honneur, comme suite à la lettre du 14 juin 1989, de transmettre sous ce pli un exemplaire imprimé de chacun des documents suivants :

— requête pour avis consultatif transmise à la Cour en vertu de la résolution 1989/75 du Conseil économique et social du 24 mai 1989 au sujet de l'*Applicabilité de la section 22 de l'article VI de la convention sur les privilèges et immunités des Nations Unies*;
— ordonnance prise le 14 juin 1989 par le Président de la Cour internationale de Justice, en la même affaire.

D'autres exemplaires de ces documents seront expédiés par la voie ordinaire.

8. L'AMBASSADEUR DE LA RÉPUBLIQUE SOCIALISTE DE ROUMANIE AUX PAYS-BAS AU GREFFIER

30 juin 1989.

J'ai l'honneur de me rapporter à votre lettre n° 81210 du 14 juin 1989 concernant la demande du Conseil économique et social des Nations Unies d'un avis consultatif sur la question juridique de l'applicabilité de la section 22 de l'article VI de la convention sur les privilèges et immunités des Nations Unies et de vous informer que le Gouvernement de la République socialiste de Roumanie se propose de présenter un exposé écrit en l'espèce.

A cette fin et prenant en considération la date très proche d'expiration du délai pour la présentation d'exposés écrits (le 31 juillet 1989), je vous prie d'avoir la bienveillance de nous envoyer, dès que possible, un exemplaire de la requête pour avis consultatif.

(Signé) Dr Constantin STATESCU.

9. LE GREFFIER A L'AMBASSADEUR DE LA RÉPUBLIQUE SOCIALISTE DE ROUMANIE AUX PAYS-BAS

30 juin 1989.

J'ai l'honneur d'accuser réception de votre lettre datée du 30 juin 1989, par laquelle vous exprimez le souhait d'obtenir un exemplaire de la requête pour avis consultatif, transmise à la Cour en vertu de la résolution 1989/75 du Conseil économique et social du 24 mai 1989.

J'ai le plaisir de vous informer que des exemplaires de ladite requête et de l'ordonnance prise, le 14 juin 1989, par le Président de la Cour internationale de Justice vous ont été transmis, ce jour-même, par un courrier séparé.

[1] Une communication analogue a été adressée aux autres Etats admis à ester devant la Cour.

10. THE AMBASSADOR OF THE UNITED STATES OF AMERICA TO THE NETHERLANDS TO THE REGISTRAR

19 July 1989.

In response to your letter to Secretary of State Baker dated June 14, 1989, concerning the request by the United Nations Economic and Social Council for an advisory opinion from the Court in the matter of Mr. Dumitru Mazilu, the Government of the United States is pleased to inform you that we intend to present to the Court a written statement by the prescribed deadline of July 31, 1989.

(Signed) C. Howard WILKINS, JR.

11. THE REGISTRAR TO THE AMBASSADOR OF THE UNITED STATES OF AMERICA TO THE NETHERLANDS

20 July 1989.

I have the honour to acknowledge receipt with thanks of Your Excellency's letter of 19 July 1989, by which you were good enough to inform the Court of the intention of the Government of the United States to submit a written statement to the Court in the case concerning the *Applicability of Article VI, Section 22, of the Convention on the Privileges and Immunities of the United Nations*.

12. L'AMBASSADEUR DE LA RÉPUBLIQUE SOCIALISTE DE ROUMANIE AU GREFFIER

24 juillet 1989.

Sur instructions du ministre des affaires étrangères de la République socialiste de Roumanie, j'ai l'honneur de vous transmettre ci-joint le mémorandum[1] que mon gouvernement a préparé au sujet de la requête pour avis consultatif dont la Cour internationale de Justice a été saisie conformément à la résolution 1989/75 du 24 mai 1989 du Conseil économique et social.

Je vous saurais gré de bien vouloir prendre les dispositions nécessaires afin que ce mémorandum soit dûment pris en considération comme exposé écrit, en conformité avec le Statut de la Cour.

13. LE GREFFIER À L'AMBASSADEUR DE LA RÉPUBLIQUE SOCIALISTE DE ROUMANIE AUX PAYS-BAS

24 juillet 1989.

J'ai l'honneur d'accuser réception de votre lettre en date de ce jour sous le couvert de laquelle vous avez bien voulu me communiquer un mémorandum de votre gouvernement constituant l'exposé écrit de ses vues au sujet de la requête pour avis consultatif transmise à la Cour en vertu de la résolution 1989/75, du 24 mai 1989, du Conseil économique et social des Nations Unies.

Je vous remercie de cette communication qui m'est parvenue dans le délai fixé par l'ordonnance du Président de la Cour en date du 14 juin 1989.

[1] Voir ci-dessus p. 201-206.

14. THE LEGAL ADVISER OF THE UNITED STATES DEPARTMENT OF STATE TO THE REGISTRAR

27 July 1989.

By letter of June 14, 1989 addressed to the Secretary of State, you notified the Government of the United States of the request of the Economic and Social Council of the United Nations for an advisory opinion from the International Court of Justice on the legal question of the applicability of Article VI, section 22 of the Convention on the Privileges and Immunities of the United Nations of February 13, 1946, in the Case of Dumitru Mazilu, as Special Rapporteur of the Sub-Commission on the Prevention of Discrimination and Protection of Minorities. By that letter and Order of the Court of the same date, the Court invited the United States and other States party to the Convention to furnish information on the question submitted to the Court and fixed July 31, 1989 as to the time-limit within which such written statements may be submitted to the Court. Enclosed is the written statement[1] of the Government of the United States providing views in regard to the question submitted to the Court.

(Signed) Abraham D. SOFAER.

15. LE GREFFIER AU JURISCONSULTE ET DIRECTEUR DES AFFAIRES JURIDIQUES DU MINISTÈRE FÉDÉRAL DES AFFAIRES ÉTRANGÈRES DE LA RÉPUBLIQUE FÉDÉRALE D'ALLEMAGNE

28 juillet 1989.

J'ai l'honneur d'accuser réception de votre lettre[2] du 13 juillet 1989, parvenue aujourd'hui au Greffe de la Cour, par laquelle vous avez bien voulu porter à ma connaissance les vues de votre gouvernement sur la question faisant l'objet de la résolution 1989/75 en date du 24 mai 1989 du Conseil économique et social.

Je vous remercie de votre communication, qui constitue l'exposé écrit de votre Gouvernement au sens du paragraphe 2 de l'article 66 du Statut de la Cour.

16. THE LEGAL COUNSEL OF THE UNITED NATIONS TO THE REGISTRAR

28 July 1989.

Pursuant to the President's Order of 14 June 1989, I have the honour to transmit herewith for communication to the Court the written statement[3] on behalf of the Secretary-General (30 copies in English) in the case of the *Applicability of Article VI, Section 22, of the Convention on the Privileges and Immunities of the United Nations*. The statement is being telefaxed to you today.

The written statement is being translated into French and will be transmitted to you within a week's time. That translation is intended to serve as a draft for the use of the Court and is not intended to be an official French version of the written statement.

[1] See pp. 208-218, *supra*.
[2] Voir ci-dessus p. 207.
[3] See pp. 173-200, *supra*.

Please also find enclosed herein the Table of Contents of the Dossier and Introduction thereto (30 copies each in English).

The English version of the Dossier will be sent to you by special delivery on Tuesday, 1 August; the French version will follow in two weeks' time.

17. THE CHARGÉ D'AFFAIRES OF THE EMBASSY OF CANADA TO THE NETHERLANDS TO THE REGISTRAR

28 July 1989.

In response to your letter dated 14 June 1989 (No. 81210) please find attached written comments[1] that my Government wishes to make in the matter of the advisory opinion requested to the International Court of Justice by resolution 1989/75 adopted by the United Nations Economic and Social Council in the case of Mr. Dumitru Mazilu as Special Rapporteur of the Sub-Commission on Prevention of Discrimination and Protection of Minorities.

This statement is made pursuant to Article 66, paragraph 2, of the Statute of the Court.

(Signed) Serge MARCOUX.

18. THE REGISTRAR TO THE LEGAL COUNSEL OF THE UNITED NATIONS

(facsimile)

31 July 1989.

I have the honour to acknowledge receipt today by facsimile of your letter dated 28 July 1989 and of the written statement of the Secretary-General in the advisory proceedings on the question of the *Applicability of Article VI, Section 22, of the Convention on the Privileges and Immunities of the United Nations*.

In view of time constraints, and pending formal transmissions and acknowledgments, I have the honour to transmit herewith the written statements in the original language, together with translations into the other official language of the Court, as available, submitted by Canada, the Federal Republic of Germany, Romania and the United States of America.

19. LE GREFFIER À L'AMBASSADEUR DE LA RÉPUBLIQUE SOCIALISTE DE ROUMANIE AUX PAYS-BAS[2]

31 juillet 1989.

Me référant à la requête pour avis consultatif soumise à la Cour au sujet de l'*Applicabilité de la section 22 de l'article VI de la convention sur les privilèges et immunités des Nations Unies*, j'ai l'honneur de vous faire tenir ci-joint, con-

[1] See p. 219, *supra*.

[2] Une communication analogue a été adressée au jurisconsulte et directeur général des affaires juridiques du ministère fédéral des affaires étrangères de la République fédérale d'Allemagne, au conseiller juridique au département d'Etat des Etats-Unis d'Amérique et au chargé d'affaires de l'ambassade du Canada aux Pays-Bas.

formément à l'article 66, paragraphe 4, du Statut de la Cour et à l'article 105, paragraphe 1, de son Règlement, le texte, en langue originale, accompagné, dans la mesure où elle est disponible, d'une traduction non officielle dans l'autre langue officielle de la Cour, des exposés écrits présentés, dans le délai fixé par l'ordonnance du Président de la Cour en date du 14 juin 1989, par le Secrétaire général des Nations Unies ainsi que par les gouvernements des Etats suivants:

Canada,
Etats-Unis d'Amérique,
République fédérale d'Allemagne.

Vous voudrez bien également trouver ci-jointe une traduction anglaise non officielle de l'exposé écrit présenté par votre gouvernement.

Comme je l'ai indiqué dans ma lettre du 14 juin 1989, le Président de la Cour, par l'ordonnance qu'il a prise le même jour, a fixé au 31 août 1989 la date d'expiration du délai pour la présentation des observations écrites que votre gouvernement souhaiterait formuler sur les exposés susmentionnés, conformément à l'article 66, paragraphe 4, du Statut de la Cour.

20. THE REGISTRAR TO THE LEGAL COUNSEL OF THE UNITED NATIONS

(facsimile)

31 July 1989.

I have the honour to acknowledge receipt today of your letter dated 28 July 1989 and the written statement on behalf of the Secretary-General (30 copies in English) in the case concerning the *Applicability of Artice VI, Section 22, of the Convention on the Privileges and Immunities of the United Nations*, both of which had been received earlier in the day by telefax.

I also have the honour to acknowledge receipt today of 30 copies each in English of the Table of Contents of the Dossier and the Introduction thereto.

Notice has been taken that the English version of the Dossier will be sent on Tuesday 1 August 1989 and that the French version and translation of the Dossier and written statement, respectively, will follow.

21. THE LEGAL COUNSEL OF THE UNITED NATIONS TO THE REGISTRAR

31 July 1989.

Further to my letter of 28 July 1989, I have the honour to transmit herewith for communication to the Court documents (30 copies in English) relating to the case of *Applicability of Article VI, Section 22, of the Convention on the Privileges and Immunities of the United Nations* (Reques for Advisory Opinion), in accordance with Article 65 of the Statute of the Court.

Please note that document No. 87 (E/CN.4/1989/SR.51/Add.1) is not available in English at present. A special request has been made to expedite its translation into English. We will forward it to you as soon as it becomes available.

The French version of the Dossier will be sent to you by special courier early next week.

22. THE LEGAL COUNSEL OF THE UNITED NATIONS TO THE REGISTRAR

1 August 1989.

Further to my letter of 31 July 1989, I have the honour to transmit herewith for communication to the Court 30 copies in English of document No. 87 (E/CN.4/1989/SR.51/Add.1) of the Dossier submitted in the case of *Applicability of Article VI, Section 22, of the Convention on the Privileges and Immunities of the United Nations* (Request for Advisory Opinion). This document should be inserted in the Dossier in place of the one in French.

23. L'AMBASSADEUR DE LA RÉPUBLIQUE SOCIALISTE DE ROUMANIE AUX PAYS-BAS AU GREFFIER

3 août 1989.

J'ai l'honneur d'accuser réception de votre lettre n° 81394 du 31 juillet 1989, par laquelle vous m'avez envoyé les exposés écrits présentés par le Secrétaire général des Nations Unies, Canada, Etats-Unis d'Amérique et République fédérale d'Allemagne, au sujet de l'*Applicabilité de la convention sur les privilèges et immunités des Nations Unies*.

24. THE LEGAL COUNSEL OF THE UNITED NATIONS TO THE REGISTRAR

8 August 1989.

Further to my letter of 28 July 1989, I have the honour to transmit herewith 15 copies in French[1] of the written statement submitted on behalf of the Secretary-General, and the Dossier submitted pursuant to Article 65 of the Statute in the case of *Applicability of Article VI, Section 22, of the Convention on the Privileges and Immunities of the United Nations* (Request for Advisory Opinion).

Please note that the written statement and many of the materials contained in the Dossier have been translated from the original English text. They are not intended to be the French version of the original submission; they are to serve as a basis for the use of the Court.

Please also note that documents Nos. 110 and 156 are not yet available in French and that we will transmit them to you as soon as they become available.

25. THE PRINCIPAL LEGAL OFFICER, OFFICE OF LEGAL AFFAIRS OF THE UNITED NATIONS, TO THE REGISTRAR

29 August 1989.

Further to Mr. Fleischhauer's letter of 8 August 1989, I have the honour to transmit herewith 15 copies in French[1] of document No. 110 (Aide-Mémoire dated 26 August 1960) of the Dossier submitted pursuant to Article 65 of the

[1] Not reproduced.

Statute in the case of *Applicability of Article VI, Section 22, of the Convention on the Privileges and Immunities of the United Nations* (Request for Advisory Opinion).

Please also note that document No. 156 is not yet available in French and that we will transmit it to you as soon as it becomes available.

(Signed) Roy S. LEE.

26. THE LEGAL ADVISER OF THE UNITED STATES DEPARTMENT OF STATE TO THE REGISTRAR [1]

By letter of June 14, 1989 addressed to the Secretary of State, you invited the Government of the United States to submit information relevant to the request of the Economic and Social Council of the United Nations for an advisory opinion from the International Court of Justice on the legal question of the applicability of Article VI, Section 22 of the Convention on the Privileges and Immunities of the United Nations of February 13, 1946, in the Case of Dumitru Mazilu, as Special Rapporteur of the Sub-Commission on the Prevention of Discrimination and Protection of Minorities.

Under cover of my letter to you dated July 27, 1989, the Government of the United States responded to this request and submitted an initial statement in this matter. The Governments of Canada, the Federal Republic of Germany and Romania, as well as the Secretary-General of the United Nations, also submitted initial statements.

By letter of July 31, 1989, you invited the Government of the United States to submit comments on the other initial statements submitted to the Court in this matter. The Government of the United States is pleased to provide the enclosed comments [2] on these initial statements.

27. THE REGISTRAR TO THE LEGAL ADVISER OF THE UNITED STATES DEPARTMENT OF STATE

31 August 1989.

I have the honour to acknowledge receipt today of the written comments of the United States of America on the written statements submitted to the Court by 31 July 1989 and communicated to you on that date, in the advisory proceedings on the question of the *Applicability of Article VI, Section 22, of the Convention on the Privileges and Immunities of the United Nations*. Those comments were submitted to the Court in accordance with Article 66, paragraph 4, of its Statute, within the time-limit fixed in the Order of the Court's President dated 14 June 1989.

The text of the written comments of the United States of America will be circulated to the United Nations, to the States which submitted written statements as well as to all other States to which the original invitation to submit written statements was extended.

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[1] Letter received on 31 August 1989 with the written comments of the United States of America.

[2] See pp. 220-227, *supra*.

I have further the honour to inform you that the Court will hold public sittings for the purpose of hearing oral statements or comments by the United Nations and the States to whom the original invitation to make written statements was extended, if they wish to be heard. The date and time of the opening of such sittings will be Wednesday, 4 October 1989 at 10 a.m.

Should your Government desire to submit an oral statement at the public sitting to be held for that purpose, it would be appreciated if you would so inform me as soon as possible.

28. LE GREFFIER À L'AMBASSADEUR DE LA RÉPUBLIQUE SOCIALISTE DE ROUMANIE AUX PAYS-BAS[1]

31 août 1989.

J'ai l'honneur de vous faire tenir ci-joint le texte, en langue originale, des observations écrites que le Gouvernement des Etats-Unis d'Amérique a présentées sur les exposés écrits reçus par la Cour au 31 juillet 1989 et qui vous ont été adressés le même jour, au sujet de la requête pour avis consultatif en l'affaire de l'*Applicabilité de la section 22 de l'article VI de la convention sur les privilèges et immunités des Nations Unies*. Ces observations ont été présentées conformément à l'article 66, paragraphe 4, du Statut de la Cour, dans le délai fixé par l'ordonnance du Président de la Cour en date du 14 juin 1989.

J'ai en outre l'honneur de porter à votre connaissance que la Cour tiendra des audiences publiques afin d'entendre en leurs exposés et observations l'Organisation des Nations Unies et les Etats qui avaient été invités à présenter des exposés écrits, au cas où ils désireraient prendre la parole devant la Cour. La date d'ouverture des audiences a été fixée au mercredi 4 octobre 1989, à 10 heures.

Dans le cas où votre gouvernement souhaiterait présenter un exposé oral pendant ces audiences, je vous serais obligé de bien vouloir m'en informer en temps utile.

29. LE GREFFIER AU MINISTRE DES AFFAIRES ÉTRANGÈRES D'AFGHANISTAN[2]

1er septembre 1989.

Par lettre du 14 juin 1989, je vous ai fait connaître que le Conseil économique et social des Nations Unies avait demandé à la Cour un avis consultatif sur la question de l'*Applicabilité de la section 22 de l'article VI de la convention sur les privilèges et immunités des Nations Unies*, et que les Etats parties à la convention sur les privilèges et immunités des Nations Unies, ainsi que l'Organisation des Nations Unies elle-même, étaient considérés par le Président comme susceptibles de fournir des renseignements sur la question. Je vous ai également fait connaître que la date d'expiration du délai pour la présentation d'exposés

[1] Une communication analogue a été adressée au jurisconsulte et directeur général des affaires juridiques du ministère fédéral des affaires étrangères de la République fédérale d'Allemagne, au chargé d'affaires *ad interim* de l'ambassade du Canada aux Pays-Bas et au Secrétaire général de l'Organisation des Nations Unies.

[2] Une communication analogue a été adressée aux autres Etats parties à la convention sur les privilèges et immunités des Nations Unies n'ayant pas présenté d'exposés écrits au titre de l'article 66, paragraphe 2, du Statut.

écrits a été fixée au 31 juillet 1989 et celle pour la présentation d'observations écrites sur ces exposés au 31 août 1989, la suite de la procédure étant réservée.

J'ai maintenant l'honneur de porter à votre connaissance que des exposés écrits ont été reçus du Secrétaire général de l'Organisation des Nations Unies et des Etats suivants: République fédérale d'Allemagne, Canada, Etats-Unis d'Amérique et Roumanie.

Des observations écrites sur ces exposés ont été reçues des Etats-Unis d'Amérique.

En application du paragraphe 4 de l'article 66 du Statut de la Cour, le texte de ces exposés et observations a été adressé à l'Organisation des Nations Unies et aux Etats susmentionnés. J'ai en outre pour instruction de l'envoyer à tous les autres Etats qui avaient été invités à présenter des exposés écrits. En conséquence, je vous fais tenir ce jour, sous pli séparé, deux volumes, l'un en français et l'autre en anglais, contenant les exposés écrits dans la langue originale ou dans des traductions de caractère non officiel, accompagnés du texte des observations écrites des Etats-Unis d'Amérique dans la langue originale.

J'ajoute que la Cour tiendra des audiences publiques afin d'entendre en leurs exposés et observations l'Organisation des Nations Unies et les Etats qui avaient été invités à présenter des exposés écrits, au cas où ils désireraient prendre la parole devant la Cour. La date d'ouverture des audiences a été fixée au mercredi 4 octobre 1989, à 10 heures.

Dans le cas où votre gouvernement souhaiterait présenter un exposé oral pendant ces audiences, je vous serais obligé de bien vouloir m'en informer en temps utile.

30. THE LEGAL COUNSEL OF THE UNITED NATIONS TO THE REGISTRAR

(facsimile)

11 September 1989.

I would like to acknowledge receipt of your letter[1] dated 31 August 1989 transmitting to us a copy of the written comments of the United States on the written statements submitted to the Court by 31 July 1989 in the advisory proceedings on the question of the *Applicability of Article VI, Section 22, of the Convention on the Privileges and Immunities of the United Nations*.

I would also like to thank you for the information regarding the opening date of the oral proceedings, and to inform you that the United Nations will present an oral statement at such proceedings.

31. THE LEGAL COUNSEL OF THE UNITED NATIONS TO THE REGISTRAR

26 September 1989.

Further to my letter of 8 August 1989, I have the honour to transmit herewith 15 copies in French[1] of document No. 156 (Extract from United Nations publication "United Nations Action in the Field of Human Rights: 40th Anniversary of the Universal Declaration of Human Rights 1948-1988") of the Dossier submitted pursuant to Article 65 of the Statute in the case of *Applicability of*

[1] Not reproduced.

Article VI, Section 22, of the Convention on the Privileges and Immunities of the United Nations (Request for Advisory Opinion).

Please note that the Dossier in French in now complete.

32. THE LEGAL COUNSEL OF THE UNITED NATIONS TO THE REGISTRAR

29 September 1989.

Further to my letter of 28 July 1989, I have the honour to transmit herewith for communication to the Court Part V (Materials relating to developments following the request by the Economic and Social Council for an advisory opinion) of documents (30 copies in English) relating to the case of *Applicability of Article VI, Section 22, of the Convention on the Privileges and Immunities of the United Nations* (Request for Advisory Opinion), in accordance with Article 65 of the Statute of the Court.

Please note that documents Nos. 163, 170 and 171 are not available at present. These documents and the French version of Part V will be sent to you as soon as they become available.

33. THE LEGAL COUNSEL OF THE UNITED NATIONS TO THE REGISTRAR

13 October 1989.

Further to my letter of 29 September 1989, I have the honour to transmit herewith for communication to the Court in English document Nos. 163, 169A and 169B, 172, 175 and revised list of documents. Also included are documents of the French version[1] of Part V.

Please note that certain documents are still not available. We have requested the Centre to expedite their production and will send them to the Court as soon as they become available.

34. THE LEGAL COUNSEL OF THE UNITED NATIONS TO THE REGISTRAR

20 November 1989.

Further to my letters of 29 September and 13 October 1989, I have the honour to transmit herewith for communication to the Court in English document Nos. 171, 171A, 171B, 171C and a revised list of documents.

Also included are the following document Nos. in French[1]: 163, 164, 165, 166, 168, 169, 169A, 169B, 169C, 170, 171 relating to Part V of the French version of the Dossier.

The remaining documents will be transmitted to the Court as soon as they become available from the Centre of Human Rights.

[1] Not reproduced.

35. THE REGISTRAR TO THE SECRETARY-GENERAL OF THE UNITED NATIONS[1]

(telex)

12 December 1989.

I have the honour to inform Your Excellency that the advisory opinion requested of the International Court of Justice on a question concerning the *Applicability of Article VI, Section 22, of the Convention on the Privileges and Immunities of the United Nations* will be delivered at a public sitting in the Great Hall of Justice of the Peace Palace, The Hague, on Friday 15 December 1989 at 10 a.m.

36. THE REGISTRAR TO THE SECRETARY-GENERAL OF THE UNITED NATIONS

15 December 1989.

I have the honour to inform Your Excellency that the sealed copy of the Advisory Opinion delivered today by the Court on the *Applicability of Article VI, Section 22, of the Convention on the Privileges and Immunities of the United Nations* was handed to your representative Mr. Fleischhauer, the Legal Counsel, during the public sitting held today for the reading of that Opinion in open Court. Further copies are being sent by pouch and the usual printed edition will be despatched in due course.

37. THE REGISTRAR TO THE AMBASSADOR OF THE SOCIALIST REPUBLIC OF ROMANIA TO THE NETHERLANDS[2]

29 January 1990.

I have the honour to refer to the written statement submitted by the Government of Romania in the case concerning *Applicability of Article VI, Section 22, of the Convention on the Privileges and Immunities of the United Nations*, and to transmit to Your Excellency herewith a copy of the printed text of the Advisory Opinion given by the Court in the case on 15 December 1989.

38. LE GREFFIER AU MINISTRE DES AFFAIRES ÉTRANGÈRES D'AFGHANISTAN[3]

19 février 1990.

Le Greffier de la Cour internationale de Justice a l'honneur de transmettre sous ce pli un exemplaire de chacune des décisions ci-après:

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[1] A communication in the same terms was sent to the Ambassador of the Socialist Republic of Romania to the Netherlands, to the Minister for Foreign Affairs of the Federal Republic of Germany, to the Secretary of State of the United States of America and to the Ambassador of Canada to the Netherlands.

[2] A similar communication was sent to the Minister for Foreign Affairs of the Federal Republic of Germany, to the Secretary of State of the United States of America and to the Ambassador of Canada to the Netherlands.

[3] Une communication analogue a été adressée aux autres Etats admis à ester devant la Cour.

— ordonnance rendue par la Cour le 13 décembre 1989 en l'affaire de l'*Incident aérien du 3 juillet 1988*;
— ordonnance rendue par la Cour le 13 décembre 1989 en l'affaire du *Différend frontalier terrestre, insulaire et maritime (El Salvador/Honduras)*;
— ordonnance rendue par la Cour le 14 décembre 1989 en l'affaire relative à des *Actions armées frontalières et transfrontalières (Nicaragua c. Honduras)*;
— avis consultatif rendu par la Cour le 15 décembre 1989 sur l'*Applicabilité de la section 22 de l'article VI de la convention sur les privilèges et immunités des Nations Unies*.

D'autres exemplaires de ces décisions seront expédiés par la voie ordinaire.

On peut acquérir les publications de la COUR INTERNATIONALE DE JUSTICE auprès des librairies spécialisées du monde entier. Pour tous renseignements, prière de s'adresser à la *Section de la distribution et des ventes, Office des Nations Unies, 1211 Genève 10 (Suisse)* ou à la *Section des ventes, Nations Unies, New York, NY 10017 (Etats-Unis d'Amérique)*.

On peut acquérir les publications de la COUR PERMANENTE DE JUSTICE INTERNATIONALE (1920-1946) auprès de Kraus Reprint Company, Kraus Organization Limited, Route 100, Millwood, NY 10546 (Etats-Unis d'Amérique). Pour tous renseignements, prière de s'adresser à cette société.

The publications of the INTERNATIONAL COURT OF JUSTICE may be ordered from any bookseller. For information regarding the sale of the Court's publications please write to the *Distribution and Sales Section, Office of the United Nations, 1211 Geneva 10 (Switzerland)*, or the *Sales Section, United Nations, New York, NY 10017 (USA)*.

The publications of the PERMANENT COURT OF INTERNATIONAL JUSTICE (1920-1946) are obtainable from Kraus Reprint Company, Kraus Organization Limited, Route 100, Millwood, NY 10546 (USA), to which all requests should be addressed.

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